

RECORD OF DECISION

Environmental Impact Statement for the Eagle Butte West Coal Lease Application WYW155132



Casper Field Office



October 2007

MISSION STATEMENT

It is the mission of the Bureau of Land Management to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations.

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**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
RECORD OF DECISION
EAGLE BUTTE WEST LEASE BY APPLICATION
WYW155132
CAMPBELL COUNTY, WYOMING**

INTRODUCTION

On December 28, 2001, the operator of the Eagle Butte Mine filed an application with the BLM for Federal coal reserves in a tract located west of and immediately adjacent to the mine in Campbell County, Wyoming, approximately three miles north of the city of Gillette (Appendix 1 - Figure 1). The application was made pursuant to the Leasing on Application regulations found in the Code of Federal Regulations (CFR) at 43 CFR Subpart 3425. In the application, the tract was referred to as the Eagle Butte Mine West Extension Lease By Application (LBA) Tract. BLM assigned case file number WYW155132 to the application and renamed it the Eagle Butte West LBA Tract.

The operator of the Eagle Butte Mine when the application was filed was RAG Coal West, Inc. In August 2004, RAG finalized the sale of the Eagle Butte Mine to Foundation Coal West, Inc. (FCW), a directly held subsidiary of Foundation Coal Holdings, Inc.

The Federal coal reserves were applied for as a maintenance tract for the Eagle Butte Mine. A maintenance tract is a tract of Federal coal that is adjacent to, and can be mined by, an existing active coal mine. As applied for, the Eagle Butte West LBA Tract includes a total of approximately 1,397.64 acres (Appendix 1 - Figure 2). FCW estimates that, as applied for, the tract includes approximately 238 million tons of mineable Federal coal reserves in Campbell County, Wyoming.

The Proposed Action analyzed in the Eagle Butte West Coal Lease Application Environmental Impact Statement (EIS) is to hold a competitive sealed-bid lease sale and issue a lease for the tract as applied for. According to the applicant, the Eagle Butte Mine needs the Federal coal included in the Eagle Butte West coal lease area in order to extend the life of the mine. The applicant would recover the Federal coal using the same methodology, machinery, and facilities that are currently being used to recover the coal in the existing Eagle Butte Mine coal leases. FCW anticipates that, if they acquire a lease for the Eagle Butte West LBA Tract, it would take approximately nine years to recover the Federal coal included in the tract.

The Eagle Butte Mine has a permit approved by the Wyoming Department of Environmental Quality Land Quality Division (WDEQ/LQD) and a Mineral Leasing Act (MLA) mining plan approved by the Secretary of the Interior to conduct surface coal mining operations on their existing coal leases. The mine also has an air quality permit approved by the Air Quality Division of the Wyoming Department of Environmental Quality (WDEQ/AQD) which allows mining of up to 35 million tons of coal per year through the year 2008.

BACKGROUND

The Lease By Application Process

In the Powder River Basin (PRB), maintenance tracts are nominated for leasing by companies with adjacent existing mines. To process an LBA the BLM must evaluate the quantity, quality, maximum economic recovery (MER) and fair market value (FMV) of the Federal coal. The BLM must also evaluate the environmental and socioeconomic impacts of leasing and mining the Federal coal in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA). BLM prepared the *Eagle Butte West Coal Lease Application Environmental Impact Statement* to evaluate the impacts of leasing the Federal coal included in the Eagle Butte West coal lease application. Leasing the Eagle Butte West LBA Tract would not authorize the lessee to begin mining operations on the tract, but the EIS evaluates the potential impacts of mining the Eagle Butte West LBA Tract because mining is a logical consequence of issuing a lease for a maintenance tract.

The Office of Surface Mining Reclamation and Enforcement (OSM) is a cooperating agency on the EIS because OSM is the Federal agency which administers programs that regulate surface coal mining in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Wyoming State Planning Office (WSPO), WDEQ/LQD, WDEQ/AQD, Wyoming Department of Transportation (WYDOT), and the Campbell County Board of Commissioners are also cooperating agencies on this EIS. WSPO coordinates planning within State agencies and facilitates collaboration among the agencies, the Federal government, other states, the private sector, and the general public. WDEQ has entered into a cooperative agreement with the Secretary of the Interior to regulate surface coal mining operations on Federal and non-Federal lands within the State of Wyoming. WYDOT's responsibilities include planning and supervising road improvement work, maintaining roads, and supporting airports and aviation in Wyoming. The responsibilities of the Campbell County Board of Commissioners include, but are not limited to, management and oversight of county roads and facilities and planning and zoning rules in the county.

By law and regulation the LBA process is an open, public, and competitive leasing process; bidding is not restricted to the applicant. FCW filed the Eagle Butte West coal lease application because the area applied for is adjacent to their existing approved mining operations at the Eagle Butte Mine and the Federal coal can be mined using their existing mine facilities, equipment and employees. As shown in Appendix 1 - Figure 1, none of the other existing surface coal mines in the PRB are immediately adjacent to the Eagle Butte West LBA Tract. In the *Eagle Butte West Coal Lease Application EIS*, the alternatives analyzed in detail assume that the applicant will be the successful bidder if a competitive sale is held.

Recent Coal Leasing Activity in the Wyoming Powder River Basin

Since decertification of the Powder River Federal Coal Region in 1990, seventeen (17) Federal coal leases in Campbell and Converse counties, Wyoming, have been issued after competitive sealed-bid sales using the LBA process. These leases include approximately 44,400 acres and 5.184 billion tons of mineable coal (see Table 1-1, *Eagle Butte West Coal Lease Application EIS*). Sixteen of the new leases were issued to the following existing mines for the purpose of extending operations at those mines: Jacobs Ranch Mine (2), Black Thunder Mine (3), North Antelope Rochelle Mine (5), Eagle Butte Mine (1), Antelope Mine (3), Buckskin Mine (1) and the former North Rochelle Mine(1). The 17th lease, the West Rocky Butte lease, was issued to the Northwestern Resources Company in 1992. They planned to start a new mine to recover the coal included in the Rocky Butte and West Rocky Butte leases. Caballo Coal Company, a subsidiary of Peabody Holding Company, Inc. and operator of the adjacent Caballo Mine, is now the lessee for the Rocky Butte and West Rocky Butte leases.

Pending Coal Leasing Applications and Other Proposed Projects in the Wyoming Powder River Basin

There are 12 pending maintenance lease applications in the Wyoming portion of the PRB, including the Eagle Butte West LBA Tract (Appendix 1 – Figure 1). The pending lease applications include approximately 4.4 billion tons of Federal coal. Sales are pending for the North Maysdorf and South Maysdorf LBA Tracts, adjacent to the Cordero Rojo Mine. In addition to the Maysdorf and Eagle Butte West LBAs, the pending coal lease applications and applicant mines are: Belle Ayr North (*Belle Ayr Mine*), West Antelope II (*Antelope Mine*), Hilight Field (*Black Thunder Mine*), West Hilight Field (*Black Thunder Mine*), West Coal Creek (*Coal Creek Mine*), Caballo West (*Caballo Mine*), Hay Creek II (*Buckskin Mine*), West Jacobs Ranch (*Jacobs Ranch Mine*), Maysdorf II (*Cordero Rojo Mine*), and Porcupine (*North Antelope Rochelle Mine*).

Oil and gas leasing and development have occurred and are occurring in this area in addition to the ongoing coal leasing and mining. Both conventional and coal bed natural gas (CBNG) wells have been drilled in and around the Eagle Butte Mine and the Eagle Butte West LBA area. Conventional and CBNG resources are currently being recovered from Federal and private oil and gas leases in the application area. Federal oil and gas lease ownership in the Eagle Butte West LBA area is described in Figure 3-19 and Table 3-10 of the final EIS. Table 3-10 was updated between the preparation of the draft and final EIS documents to identify changes in Federal lease ownership. Federal oil and gas lessees and private interests identified by the applicant were included on the mailing list for the *Eagle Butte West Coal Lease Application EIS*.

The EIS discusses conventional oil and gas development in and around the Eagle Butte West LBA Tract. The discussion includes a summary of the results of an analysis of the conventional oil and gas drilling that has occurred in the area, prepared by the BLM Wyoming Reservoir Management Group (WSO-RMG). The EIS identifies the status and location of four

conventional oil and gas wells within the BLM study area for the Eagle Butte West coal lease application (Figure 3-19). At the time the draft EIS analysis was prepared, none of those wells were capable of producing. Review of the Wyoming Oil and Gas Conservation Commission (WOGCC) well database as of September 2007 did not indicate the presence of any newly producing conventional oil and gas wells.

The EIS also discusses coal bed natural gas (CBNG) development in and around the Eagle Butte West LBA area, including a summary of an analysis of CBNG resources in the Eagle Butte West LBA Tract prepared by the BLM WSO-RMG. At the Eagle Butte Mine, there are two mineable coal seams, which are locally referred to as the Roland and Smith coal seams. The USGS refers to these coal beds as the Wyodak-Anderson zone. In this area, CBNG has been produced from the Wyodak-Anderson zone since the late 1980's. The WSO-RMG estimated that, as of 2000, the coal in the area of the Eagle Butte West LBA Tract had an average content of approximately about 6.3 standard cubic feet of CBNG per ton of coal and the estimated recoverable CBNG resource in the tract at that time would have ranged from approximately 1.1 to 1.5 billion cubic feet. The EIS identifies the status and location of CBNG wells within the BLM study area for the tract when the EIS was prepared (Figure 3-19). Review of the WOGCC well database as of September 2007 did not indicate the presence of additional producing CBNG wells.

There are several mechanisms that can be used to facilitate recovery of the conventional oil and gas and CBNG resources prior to mining if the Federal coal in the tract is leased now:

- BLM will attach a Multiple Mineral Development stipulation to the Federal coal lease which states that BLM has the authority to withhold approval of coal mining operations that would interfere with the development of mineral leases issued prior to the coal lease [see Appendix 2].
- Conventional oil and gas wells must be abandoned while mining and reclamation operations are in progress but could be recompleted or redrilled following mining, if the value of the remaining reserves would justify the expense of reestablishing production. There are currently no producing conventional oil and gas wells on this LBA tract. The analysis prepared by WSO-RMG indicates that there has been little conventional exploration and development in this area in recent years.
- BLM has a policy in place on CBNG-coal conflicts (BLM Instruction Memorandum No. 2006-153), which directs BLM decision-makers to optimize the recovery of both CBNG and conventional resources and ensure that the public receives a reasonable return. This memorandum offers royalty incentives to CBNG operators to accelerate production in order to recover the natural gas while simultaneously allowing uninterrupted coal mining operations. In addition, this memorandum also states that it is the policy of the BLM to encourage oil and gas and coal companies to resolve conflicts between themselves and, when requested, the BLM will assist in facilitating agreements between the companies.

- CBNG has been produced from the Wyodak Anderson coal zone (locally referred to as the Roland and Smith coal seams) in this area since the late-1980s. The analysis prepared by WSO-RMG suggests that CBNG resource in this zone has been substantially depleted in the vicinity of the tract, either by mining operations or by recovery from producing wells and that there are insufficient remaining reserves to support additional drilling. Mining of the Eagle Butte West LBA Tract would not be authorized until the coal lessee has a permit to mine that tract approved by the WDEQ/LQD and a MLA mining plan approved by the Secretary of the Interior. Before the MLA mining plan can be approved, BLM must approve a Resource Recovery and Protection Plan. Prior to approving the Resource Recovery and Protection Plan, BLM can review the status of CBNG and conventional oil and gas development on the tract and the mining sequence proposed by the coal lessee. The permit approval process generally takes the coal lessee several years, during which time CBNG resources can continue to be recovered.
- Prior to mining the Federal coal, the coal lessee can negotiate an agreement with owners and operators of existing oil and gas facilities on the tract, including owners and operators of oil and gas well and pipeline facilities, regarding removal of those facilities prior to mining.

Other proposed projects in the Wyoming PRB that have advanced to the planning, permitting, or construction stages and that would reasonably be expected to be completed in the foreseeable future include: the almost completed Wygen II and, potentially, the proposed Wygen III coal-fired power plants at the Black Hills Corporation energy complex near the Wyodak Mine site in Gillette, Wyoming; the Dry Fork Station coal-fired power plant proposed by Basin Electric Power Cooperative near the Dry Fork Mine, north of Gillette; the Two Elk coal-fired power plant proposed by the North American Power Group (NAPG), which would be located east of the Black Thunder Mine; and a railroad line from the PRB to Minnesota proposed by the Dakota, Minnesota, and Eastern Railroad Corporation (DM&E). In early September, 2007, Canadian Pacific Railway Ltd announced it is in the process of buying DM&E.

The proposed power plants and the DM&E railroad line and the ongoing and proposed oil and gas operations (including CBNG) are separate projects being developed independently of leasing the Eagle Butte West LBA Tract. If these other projects are developed as proposed and the Eagle Butte West lease application area is leased and mined as proposed, there would potentially be some overlap between the environmental and economic impacts of constructing and operating some of those projects and the environmental and economic impacts of mining the Eagle Butte West LBA Tract. The cumulative effects of all of these projects (the Wygen power plants, the Two Elk power plant, the Dry Fork Station power plant, the DM&E railroad, the ongoing and proposed oil and gas development and production, and the coal mining that would follow the leasing of Eagle Butte West lease application area and the other pending LBA tracts) are described in Chapter 4 of the *Eagle Butte West Coal Lease Application EIS*. The cumulative impact discussion in the EIS is based on the analyses done for the PRB Coal Review, which can

be viewed on the BLM website at:

http://www.blm.gov/wy/st/en/programs/energy/Coal_Resources/PRB_Coal/prbdocs.html.

DECISION

The decision is to select Alternative 1, as described in Chapter 2 of the *Eagle Butte West Coal Lease Application EIS*. Under Alternative 1, the Federal coal included in the Eagle Butte West LBA Tract, as modified by BLM, would be offered for lease at a competitive sealed-bid sale and a lease would be issued to the successful qualified high bidder, if the highest bid received at the sale meets or exceeds the FMV as determined by the BLM and if all other leasing requirements are met. The competitive lease sale will be held under the regulations found at 43 CFR Subpart 3422, Lease Sales. As described under Alternative 1 in the EIS, the Eagle Butte West LBA Tract (WYW155132), as modified by the BLM, includes 1,427.77 acres more or less and the BLM estimates that the tract contains approximately 255 million tons of mineable Federal coal resources in Campbell County, Wyoming.

This decision is in conformance with the *Approved Resource Management Plan for Public Lands Administered by the BLM Buffalo Field Office* (RMP), which was completed in 2001 and amended in 2003. I have incorporated by reference in this decision standard coal lease stipulations addressing compliance with basic requirements of the environmental statutes and have attached BLM special stipulations (Appendix 2).

In the event that the bid or bids submitted at the competitive lease sale of the Eagle Butte West LBA Tract do not meet or exceed the FMV as determined by the BLM, the BLM may schedule a follow-up sale.

Under Alternative 1, it is assumed that the applicant will be the successful bidder on the Eagle Butte West LBA Tract and that the coal will be mined, processed and sold by the Eagle Butte Mine. If the tract is mined, it would be environmentally preferable to mine and reclaim the Eagle Butte West LBA Tract as a maintenance lease in a logical sequence with the ongoing mining and reclamation operations at an adjacent existing mine. This would be consistent with the analysis of the impacts described in the EIS.

REASONS FOR THE DECISION

The BLM decision to hold a lease sale for the Federal coal lands included in the Eagle Butte West LBA area is based on careful consideration of a number of factors, including:

- The decision to offer the Eagle Butte West LBA Tract (1,427.77 acres containing approximately 255 million tons of mineable Federal coal reserves), in response to the coal lease application received on December 28, 2001, is in conformance with the BLM

land use plan covering this area (See Conformance with Existing Land Use Plans Section, below).

- The *Eagle Butte West Coal Lease Application EIS* was prepared in response to an application BLM received to lease a tract of Federal coal to an existing mine in Wyoming. The environmental impacts of this decision were fully disclosed in that EIS. Public comment was addressed in the Final EIS.
- The Eagle Butte Mine applied for the Eagle Butte West LBA Tract in order to acquire access to a continuing supply of low sulphur compliance coal that would be sold to power plants for the purpose of generating power. Continued leasing of the low sulphur PRB coal enables coal-fired power plants to meet Clean Air Act requirements without constructing new power plants, revamping existing plants, or switching to other alternative fuels. Generally, the costs of constructing new power plants, retrofitting or revamping existing plants, or re-tooling and switching to other alternative fuels effect additional costs to energy customers.
- The BLM's preferred tract configuration under Alternative 1 provides for maximum economic recovery of the coal resource.
- When an application to lease Federal coal is submitted, the BLM must decide whether to process the application and hold a competitive sealed-bid lease sale for the coal or reject the application and not offer the coal for lease. Regardless of the decision, the BLM must notify the applicant in a timely fashion of its decision. The EIS provides the BLM with the information needed to meet its obligations to respond to an application in a timely fashion.
- A primary goal of the National Energy Policy is to add energy supplies from diverse sources including domestic oil, gas, and coal in addition to hydropower and nuclear power. The BLM recognizes that the continued extraction of coal is essential to continue to meet the nation's demands for energy. As a result, private development of Federal coal reserves is integral to the BLM coal leasing programs under the authorities of the Mineral Leasing Act of 1920, the Federal Land Policy and Management Act of 1976 (FLPMA) and the Federal Coal Leasing Amendments Act of 1976 (FCLAA).
- The BLM coal leasing program encourages the development of domestic coal reserves and reduction of the United States' dependence on foreign sources of energy. The leasing and subsequent mining of Federal coal reserves provide the United States, the State of Wyoming, and affected counties with income in the form of lease bonus payments, lease royalty payments, and tax payments. Production of Federal coal also provides the public with a supply of cost-efficient, low sulphur coal for power generation. The alternative selected meets the goals of the National Energy Policy and achieves the objectives of the Federal coal leasing programs managed by the BLM.

Federal coal leasing is supported by the Wyoming Governor, the Wyoming legislature, and other state and local officials.

- The U.S. Fish and Wildlife Service has provided written concurrence for leasing the Eagle Butte West LBA Tract pursuant to section 7(a)(2) of the Endangered Species Act of 1973, as amended (Appendix 3).
- Consultation with the appropriate Native American tribes was initiated in June of 2007. One tribe requested additional information on the cultural sites surveyed on the tract. BLM is continuing to correspond with this tribe regarding their request. No sites were recommended as eligible to the National Register based on testing and evaluation, and none of the sites have associations or characteristics of Traditional Cultural Properties National Historic Preservation Act consultation with the Wyoming State Historic Preservation Office will be completed as required during the permitting process, prior to any disturbance of the tract.
- Coal-fired power plant emissions include greenhouse gases, which contribute to global warming, and mercury, which can have adverse health effects to both humans and other animals. If the Federal coal included in the Eagle Butte West LBA Tract is leased, mined at currently permitted levels, and used to generate electricity by a coal-fired power plant, the emissions of greenhouse gases and mercury attributable to the Eagle Butte Mine would be extended for seven to ten additional years at approximately current levels. Issuing a Federal coal lease for the Eagle Butte West LBA Tract would not result in the creation of new sources of anthropomorphic greenhouse gas or mercury emissions and the rates of anthropomorphic greenhouse gas or mercury emissions would not be expected to increase.

PUBLIC INVOLVEMENT

BLM received the Eagle Butte West coal lease application on December 28, 2001. On April 29, 2002, the BLM published notice of the receipt of this lease application in the *Federal Register*. Copies of this notice were sent to voting and non-voting members of the Powder River Regional Coal Team (PRRCT), including the governors of Wyoming and Montana, the Northern Cheyenne Tribe, the Crow Tribe, Forest Service, OSM, U.S. Fish & Wildlife Service, U.S. National Park Service, U.S. Geological Survey, and others.

On May 30, 2002 and April 27, 2005, the PRRCT reviewed the Eagle Butte West coal lease application at public meetings held in Casper and Gillette, Wyoming, respectively. The PRRCT recommended that the BLM process the application. The BLM published a Notice of Intent to Prepare an EIS and a Notice of Scoping in the *Federal Register* on May 2, 2005. Scoping notices were mailed to Federal, State and Local government agencies, conservation groups, commodity groups, and individuals who could be impacted by this LBA in April 2005. The mailing list was jointly developed by BLM and the applicant. On May 17, 2005, a public

scoping meeting was held in Gillette, Wyoming. The scoping period extended through August 1, 2005.

The *Draft Eagle Butte West Coal Lease Application EIS* was mailed to the public and other interested parties in October of 2006. On October 20, 2006, the Environmental Protection Agency (EPA) published its Notice of Availability of the Draft EIS in the *Federal Register*. BLM's Notice of Availability and Notice of Public Hearing were also published in the *Federal Register* on October 20, 2006. The 60-day review and comment period on the Draft EIS started on October 20, 2006, with the publication of the EPA's Notice of Availability in the *Federal Register*, and ended on December 19, 2006. A formal public hearing was held on November 14, 2006, in Gillette, Wyoming, to solicit public comment on the Draft EIS, the proposed lease sale, and the FMV and MER of the Federal coal included in the tract. The Final EIS was mailed to the public and other interested parties in August 2007. The EPA and BLM both published a Notice of Availability of the Final EIS in the *Federal Register* on August 31, 2007. The availability period for the final EIS ended October 1, 2007.

During the EIS scoping period the BLM received written, e-mailed, and telephoned-in comments from 16 entities. The BLM received eight written comments on the Draft EIS. They are included, with responses, as Appendix I of the Final EIS. The applicant and one member of the public made formal statements at the public hearing on November 14, 2006. Comments were received from two entities on the Final EIS. Those comments are summarized, with BLM responses, in Appendix 4. The written comments and the transcript of the formal hearing are on file at the BLM Casper Field Office and BLM Wyoming State Office, Cheyenne, Wyoming. All comments that were received during the EIS process were considered in the preparation of the Draft and Final EIS documents and in this Record of Decision.

ALTERNATIVES ANALYZED IN DETAIL

The EIS analyzes three alternatives for the Eagle Butte West LBA Tract in detail: the Proposed Action, Alternative 1 (the Selected Alternative) and Alternative 2 (the No Action Alternative). These alternatives are summarized below. A full description of each of the alternatives analyzed in detail may be found in Chapter 2 of the EIS.

Proposed Action: Hold a Competitive Sale of Federal Coal Lands as Applied For

Under the Proposed Action, the lands that were applied for in the Eagle Butte West LBA Tract would have been offered for lease at a competitive sealed-bid sale. As applied for, the tract includes approximately 1,397.64 acres, more or less (see Appendix 1 - Figure 2). The applicant estimates that it includes approximately 238 million tons of mineable Federal coal. This alternative assumes that the applicant would be the successful bidder on the Eagle Butte West LBA Tract and that the coal would be mined, processed and sold by the Eagle Butte Mine.

Alternative 1 (Selected Alternative): Hold a Competitive Sale for a Tract As Modified by BLM to Allow for More Efficient Recovery of the Federal Coal in This Area

In reviewing the Eagle Butte West coal lease application, BLM identified a study area, which includes that tract as applied for and approximately 974.91 acres of unleased Federal coal adjacent to the northern and southern edges of the tract as applied for (Appendix 1 - Figure 2). In delineating the study area, BLM wanted to evaluate whether adding additional unleased Federal coal to the tract as applied for would potentially increase competitive interest in the tract, allow for more efficient recovery of the Federal coal in this area, or reduce the likelihood that some of the remaining unleased Federal coal in this area would be bypassed in the future.

The Final EIS identifies BLM's preferred tract configuration for the Eagle Butte West coal lease application. BLM's preferred tract configuration is to add a portion of the study area, approximately 30.13 acres, to the tract as applied for in order to allow for more efficient recovery of the Federal coal (Appendix 1 - Figure 3). Under the Selected Alternative, the Federal coal included in the Eagle Butte West LBA Tract under BLM's preferred tract configuration will be offered for lease at a competitive sealed-bid sale.

Under the Selected Alternative, the Eagle Butte West LBA Tract includes approximately 1,427.77 acres. BLM estimates that the modified tract contains approximately 255 million tons of mineable coal.

Table 1: Description of lands to be offered for competitive sale under Alternative 1

The legal description of the Eagle Butte West LBA Tract under the BLM's Selected Alternative is:

T.51N., R.72W., 6th P.M., Campbell County, Wyoming

Section 19:	Lots 13, 14, 19, and 20	187.79 acres
Section 20:	Lots 10(NW¼, S½), 11 through 15	231.87 acres
Section 29:	Lots 1(W½), 2 through 7, 8(W½, SE¼), and 9 through 16	635.45 acres
Section 30:	Lots 5, 6, 11 through 14, 19, and 20	372.66 acres
Total:		<u>1,427.77 acres</u>

The land description and acreage are based on the BLM Status of Public Domain Land and Mineral Titles approved Coal Plat as of April 4, 2005. The coal estate in the tract described above is Federal and the surface estate is owned by FCW.

The Selected Alternative for the Eagle Butte West LBA Tract assumes that the applicant would be the successful bidder on the tract if a lease sale is held and that the tract would be mined as a

maintenance lease for the Eagle Butte Mine. There are no other active coal mines adjacent to the Eagle Butte West LBA Tract.

Alternative 2: Reject the Application (No Action Alternative)

Under the No Action Alternative, the application to lease the Federal coal included in the Eagle Butte West LBA Tract would have been rejected and the tract would not have been offered for lease at this time. Currently permitted mining activity at the adjacent Eagle Butte Mine will continue, with or without leasing the Eagle Butte West LBA Tract. Assuming that this tract would never be leased and coal removal and the associated disturbance would never occur, this alternative would be the environmentally preferable alternative. However, selection of this alternative would not preclude future applications to lease all or part of the Federal coal included in this tract.

ALTERNATIVES CONSIDERED BUT NOT ANALYZED IN DETAIL

Further descriptions of these alternatives may be found in Chapter 2 of the Final EIS.

Alternative 3

As under the Proposed Action, BLM would have held a competitive coal lease sale for the tract as applied for and issued a lease to the successful bidder. This alternative assumed that the applicant would not be the successful bidder, and that the Federal coal would be developed as a new stand-alone mine. BLM estimates that 500 to 600 million tons of coal would be needed to attract a buyer interested in constructing a new mine in the Wyoming PRB. This alternative was considered and eliminated from detailed study because the current economics of mining in the Powder River Federal Coal Region appear to make it economically unfeasible to construct a new mine to recover the Federal coal included in the Eagle Butte West LBA Tract, which includes approximately 255 million tons of mineable coal under BLM's preferred tract configuration.

Alternative 4

Under Alternative 4, the BLM would have postponed a sale of the Eagle Butte West LBA Tract to potentially increase the benefits to the public if coal prices increase within the PRB or to allow recovery of additional CBNG resources in the tract prior to mining.

This alternative was not analyzed in detail because it would not produce significantly different impacts than other alternatives analyzed in detail. Royalty and tax payments are collected at the time the coal is sold. They increase as coal prices increase, which allows the United States to benefit if coal prices have increased by the time of mining. Conventional oil and gas production and distribution facilities on the tract have to be removed prior to mining, but mining would not disturb any conventional oil and gas reservoirs that are located within the tract because they lie

below the coal. Economically recoverable conventional oil and gas resources in those reservoirs could be recovered after the coal is mined and the tract is reclaimed. Recovery of CBNG resources on the tract is occurring and, as discussed in the Background section above, the analysis prepared by WSO-RMG suggests that most of the economically recoverable CBNG resources in the vicinity of the tract have been recovered from the Wyodak-Anderson zone and that there are insufficient remaining reserves to support additional drilling. The environmental impacts of mining the Federal coal at a later time as part of an existing mine would be expected to be similar and about equal to the Proposed Action. If a new mine start is required to recover the coal in this tract, the environmental impacts would be expected to be greater than if the tract is mined as an extension of an existing mine.

CONFORMANCE WITH EXISTING LAND USE PLANS

Under the requirements of FCLAA, lands that are being considered for Federal coal leasing must be included in a comprehensive land use plan and leasing decisions must be compatible with that plan. The BLM *Approved Resource Management Plan for Public Lands Administered by the Bureau of Land Management Buffalo Field Office* (BLM 2001a) [an update of the *Buffalo Resource Area Resource Management Plan* (BLM 1985)] governs and addresses the leasing of Federal coal in Campbell County.

The major land use planning decision that BLM must make concerning the Federal coal resources is a determination of which Federal coal lands are acceptable for further consideration for leasing. The four screening procedures used to identify these coal lands require BLM to:

- estimate development potential of the coal lands;
- apply the unsuitability criteria listed in the regulations at 43 CFR 3461;
- make multiple land use decisions that eliminate Federal coal deposits from consideration for leasing to protect other resource values; and
- consult with surface owners who meet the criteria defined in the regulations at 43 CFR 3400.0-5 (gg) (1) and (2).

Under the first coal screening procedure, a coal tract must be located within an area that has been determined to have coal development potential [43 CFR 3420.1-4(e) (1)]. The Eagle Butte West coal lease application is within the area identified as having coal development potential by the BLM in the coal screening analyses published in the 2001 BLM Buffalo Field Office planning document.

The second coal screening procedure requires the application of the unsuitability criteria listed in the regulations at 43 CFR 3461. These coal mining unsuitability criteria were applied to high to moderate coal development potential lands in the Wyoming PRB, including the Eagle Butte West LBA Tract and surrounding lands during the coal screening conducted for the 2001 BLM Buffalo Office RMP update. No lands included in the Eagle Butte West LBA Tract were found to be unsuitable for mining during the application of the unsuitability criteria for the 2001 RMP update;

however, site-specific unsuitability determinations for some criteria were deferred until an application to lease was filed.

Unsuitability Criterion Number 3 states that lands within 100 ft of the outside line of the right of way (ROW) of a public road shall be considered unsuitable for surface coal mining, with certain exceptions. One of the exceptions allows surface coal mining in the ROW and buffer zone for a public road if the regulatory authority (or the appropriate public road authority designated by the regulatory authority) allows the public road to be relocated or closed after providing public notice and opportunity for a public hearing; and finding in writing that the interests of the affected public and landowners will be protected [30 CFR 761.11(d) and 43 CFR 3461.5(c) (2) (iii)].

A portion of U.S. Highway 14-16 and its ROW crosses the eastern edge of the Eagle Butte West LBA Tract under the Selected Alternative (Appendix 1, Figure 3). The 2001 BLM Buffalo RMP update deferred a decision on the unsuitability of the U.S. Highway 14-16 ROW and associated buffer zone until a leasing action was proposed. When the application was filed, FCW did not have approval from the appropriate public road authority (WYDOT) to relocate the road and the exception did not apply. As a result, BLM determined that the portion of the Eagle Butte West LBA Tract that includes U.S. Highway 14-16, its ROW, and a 100-ft buffer zone on either side of the ROW must be considered unsuitable for mining under Unsuitability Criterion Number 3 at that time.

During the preparation of the Eagle Butte West Coal Lease Application EIS, FCW and WYDOT were working on a proposal to relocate U.S. Highway 14-16 to allow recovery of the coal underlying the highway, the ROW and the buffer zone. In a letter to FCW, dated March 12, 2007, WYDOT accepted FCW's proposal to relocate US Highway 14-16 (Appendix 5). State Decision Document for the Foundation Coal West, Inc., Eagle Butte Mine Permit No. 428-T5-R3, Change No. 10 was signed by the Administrator of the WDEQ/LQD on August 2, 2007 (Appendix 5). It states:

“Public notice and opportunity for public hearing for the relocation of Highway 14/16 have been provided by WYDOT through notices in the Gillette News-Record published January 25, 2006, February 1, 5, and 6, 2006, and March 5, 2006. A Public Open House and Information Meeting was held in Gillette on February 7, 2006 followed by a 30-day public comment period. Based on this information, the LQD Administrator determined that adequate public notice and an opportunity for public hearing were provided by WYDOT as the authority with jurisdiction over the public Highway, and the required written finding has been made determining that the interests of the public and the affected landowners will be protected from the proposed operation as per LQD Rules and Regulations Chapter 12, Section 1(a)(v)(D).”

Based on these actions by WYDOT and WDEQ/LQD, BLM considers that the exception to Unsuitability Criterion Number 3 is now applicable and determines that the Federal coal underlying U.S. Highway 14-16, its ROW, and the associated 100-foot buffer zone are not now considered to be unsuitable for mining under the regulations at 43 CFR 3461.5(c) (2) (iii). Therefore, there are no unsuitability findings for the Eagle Butte West LBA Tract under the BLM's Selected Alternative.

The third coal screening procedure, a multiple land use conflict analysis, must be completed to identify and “eliminate additional coal deposits from further consideration for leasing to protect resource values of a locally important or unique nature not included in the unsuitability criteria”, in accordance with 43 CFR 3420.1-4(e)(3). The 2001 Buffalo RMP update addresses two types of multiple land use conflicts: municipal/residential conflicts and multiple mineral development (coal versus oil and gas) conflicts.

The municipal/residential multiple land use conflict was addressed by applying buffers around the municipal planning boundaries for the major municipalities within the BLM Buffalo Field Office area, including Gillette. The Gillette Buffer Zone, which extends three miles beyond the City of Gillette Planning District as shown in Figures 2 and 3 of Appendix 1, was established at the request of the city in 1979. The BLM Buffalo RMP (1985) included a provision that prohibited new coal leasing within the Gillette Buffer Zone.

At the time the Gillette Buffer Zone was established, there were several coal leases associated with existing approved coal mining operations located within its northern and eastern boundaries, and those mines were allowed to continue operations within the buffer zone. The Buffalo RMP was amended in 1988 to allow lease modifications, exchanges, and emergency coal leasing within the Gillette Buffer Zone in situations where coal adjacent to existing mines would be bypassed if coal leasing was not allowed within the buffer zone, and where coal leasing would not conflict with city planning. These leasing actions cannot extend more than one mile beyond the existing coal lease boundaries. The RMP amendment also specified that, before any new coal is leased within the buffer zone, the coal screening process, including application of the coal unsuitability criteria, would be conducted and the Gillette City Council would be consulted. On August 17, 1993, the manager of the BLM Buffalo Field Office approved a change to the Buffalo RMP that added LBAs to the types of leasing actions that can be considered within the Gillette Buffer Zone. The BLM Buffalo RMP update (2001) carried these changes forward.

The additional area evaluated by BLM under Alternative 1, shown in Appendix 1 - Figure 2, extended into the Gillette Buffer Zone. The BLM’s preferred tract delineation, shown in Appendix 1 - Figure 3, does not extend into the Gillette Buffer Zone.

BLM’s evaluation of the multiple mineral development conflicts related to issuing a lease for the Eagle Butte West LBA Tract are discussed in Pending Coal Leasing Applications and Other Proposed Projects in the Wyoming Powder River Basin section, above.

The fourth coal screening procedure requires consultation with surface owners who meet the criteria defined in the regulations at 43 CFR 3400.0-5 (gg) (1) and (2). The surface of the Eagle Butte West LBA Tract under BLM’s preferred tract configuration is owned by FCW, and FCW does not meet the qualified surface owner criteria, as defined in the regulations.

In summary, the lands in the Eagle Butte West LBA have been subjected to the four coal planning screens and determined to be acceptable for further consideration for leasing. Thus, a decision to lease the Federal coal lands in this application would be in conformance with the current BLM Buffalo RMP

MITIGATION, COMPLIANCE AND MONITORING

If the Eagle Butte West LBA Tract is leased, the lease will contain the standard coal lease stipulations. The attached BLM Special Stipulations (Appendix 2) regarding cultural resources, paleontological resources, threatened and endangered species, multiple mineral development of oil and gas or coal resources or both, resource recovery and protection, and public land survey will be added to the lease.


After a Federal coal lease is issued, SMCRA gives the OSM authority to administer programs that regulate surface coal mining operations. The WDEQ regulates surface coal mining activities in Wyoming. If the Eagle Butte Mine is the successful, qualified high bidder for the Federal coal included in the Eagle Butte West LBA Tract (WYW155132), a permit revision must be approved by the WDEQ/LQD and a MLA mining plan revision must be approved by the Assistant Secretary of the Interior before the coal in the tract can be mined. The existing mitigation measures specific to the currently approved mine plan for the adjacent mine will be revised to include mitigation measures specific to mining WYW 155132 when the mining permit is amended.

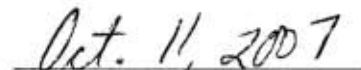
If the successful, qualified high bidder for the Federal coal included in the Eagle Butte West LBA Tract does not operate an adjacent mine and proposes to construct and operate a new mine in order to recover the Federal coal reserves, then a new permit application package must be submitted to and approved by WDEQ/LQD and a new MLA mining plan must be approved by the Assistant Secretary of the Interior before WYW155132 can be mined. The approved permit would include mitigation measures and monitoring plans specific to mining the newly leased tract.

Prior to mining of the areas subject to the coal lease, all practicable means to avoid or minimize environmental harm will be adopted as leasing stipulations or, as consistent with normal practices, can be expected to be adopted as conditions of the mining permit. To ensure that the revised plan is in compliance with the leasing stipulations, BLM has a responsibility to review the Resource Recovery and Protection Plan (R2P2) prior to approval of the mining plan. Before any mining operations can begin on the Eagle Butte West LBA Tract, a R2P2 applicable to the tract must be approved by the BLM, a permit or permit revision must be approved by WDEQ/LQD, and a MLA mining plan or plan revision must be approved by the Assistant Secretary of the Interior.

RECOMMENDATION

I recommend that, after a competitive lease sale is held, Federal coal tract WYW155132, with its associated 1,427.77 acres more or less be issued to the successful, qualified high bidder, provided it is determined that the highest bid at the sale meets or exceeds the FMV of the tract as determined by the BLM and that all other leasing requirements are met. This is Alternative 1, offering a tract as modified by BLM, as described in this record of decision. The competitive lease sale will be held in accordance with the requirements at 43 CFR Subpart 3422. The lease will be subject to the attached BLM special lease stipulations (Appendix 2)


Assistant Field Manager for Solid Minerals (Acting)
Casper Field Office


Date

APPROVAL

I agree with the recommendation of the Assistant Field Manager for Solid Minerals and I approve the decision to offer Federal coal tract WYW155132 for competitive lease sale.


BLM Wyoming State Director

10/18/07
Date

APPEAL OF STATE DIRECTOR DECISION

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR Subpart 4 and the enclosed form 1842-1 (Appendix 6). If an appeal is filed, your notice of appeal must be filed in this office (BLM, Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003) within thirty (30) days from the date BLM published the Notice of Availability (NOA) of this Record of Decision in the *Federal Register*. BLM expects that the NOA will be published (*insert date when known*). The appellant has the burden of showing that the decision appealed is in error.

If you wish to file a petition (request) pursuant to regulation 43 CFR 4.21(a)(2) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standard for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for stay of a decision pending appeal shall show sufficient justification based on the following standards:

- 1) The relative harm to the parties if a stay is granted or denied;
- 2) The likelihood of the appellant's success on the merits;
- 3) The likelihood of immediate and irreparable harm if the stay is not granted; and
- 4) Whether the public interest favors granting a stay.

- Appendix 1. Figures 1, 2, and 3
- Appendix 2. BLM Special Coal Lease Stipulations for the Eagle Butte West Federal Coal Lease Tract (WYW155132)
- Appendix 3. Responses Concurrence letter from the U.S. Fish and Wildlife Service
- Appendix 4. Public Comments on the Final EIS and BLM
- Appendix 5. U.S. Highway 14-16 Relocation Documents
- Appendix 6: Appeal Procedures

APPENDIX 1

FIGURES

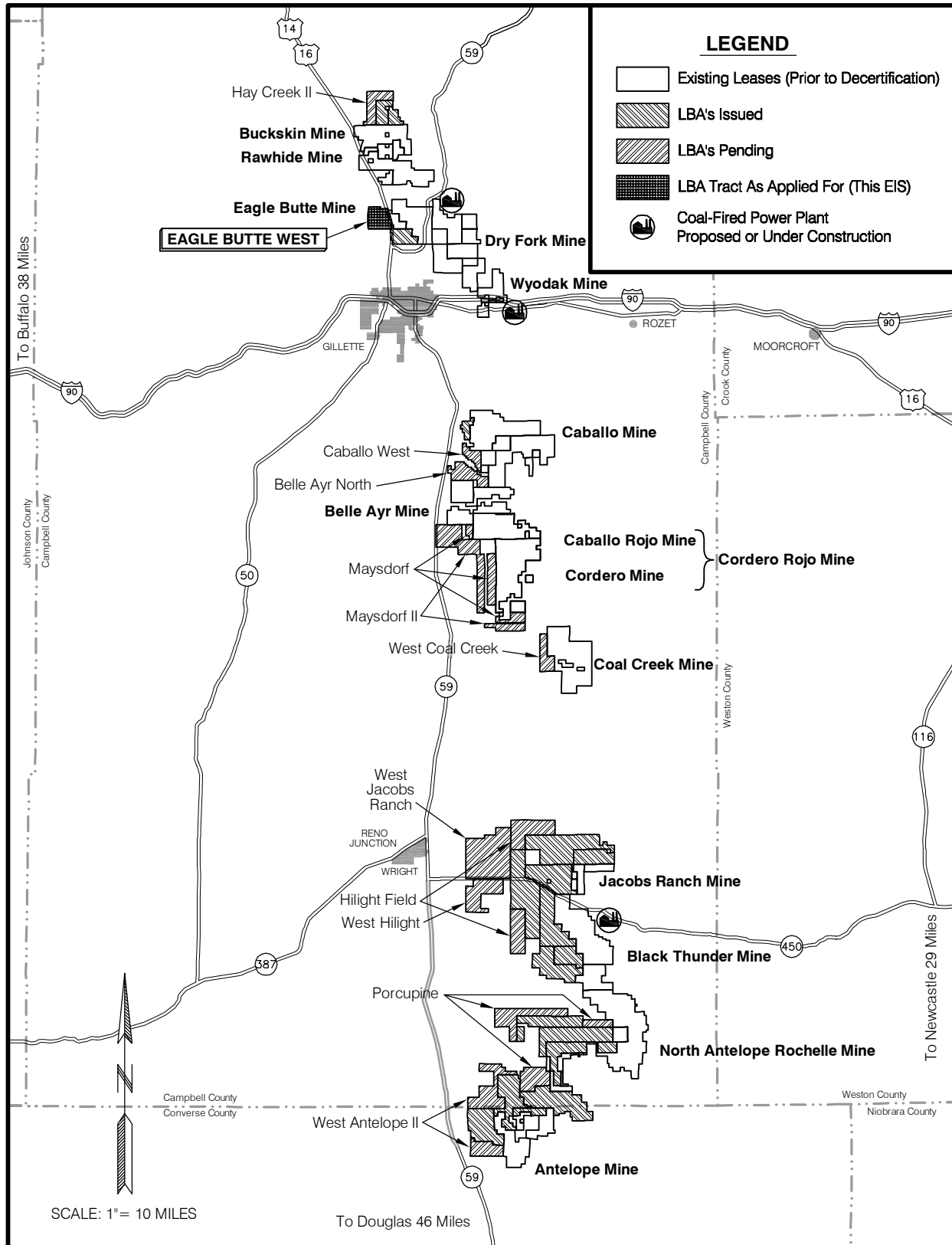


Figure 1. General Location Map with Federal Coal Leases and LBA Tracts.

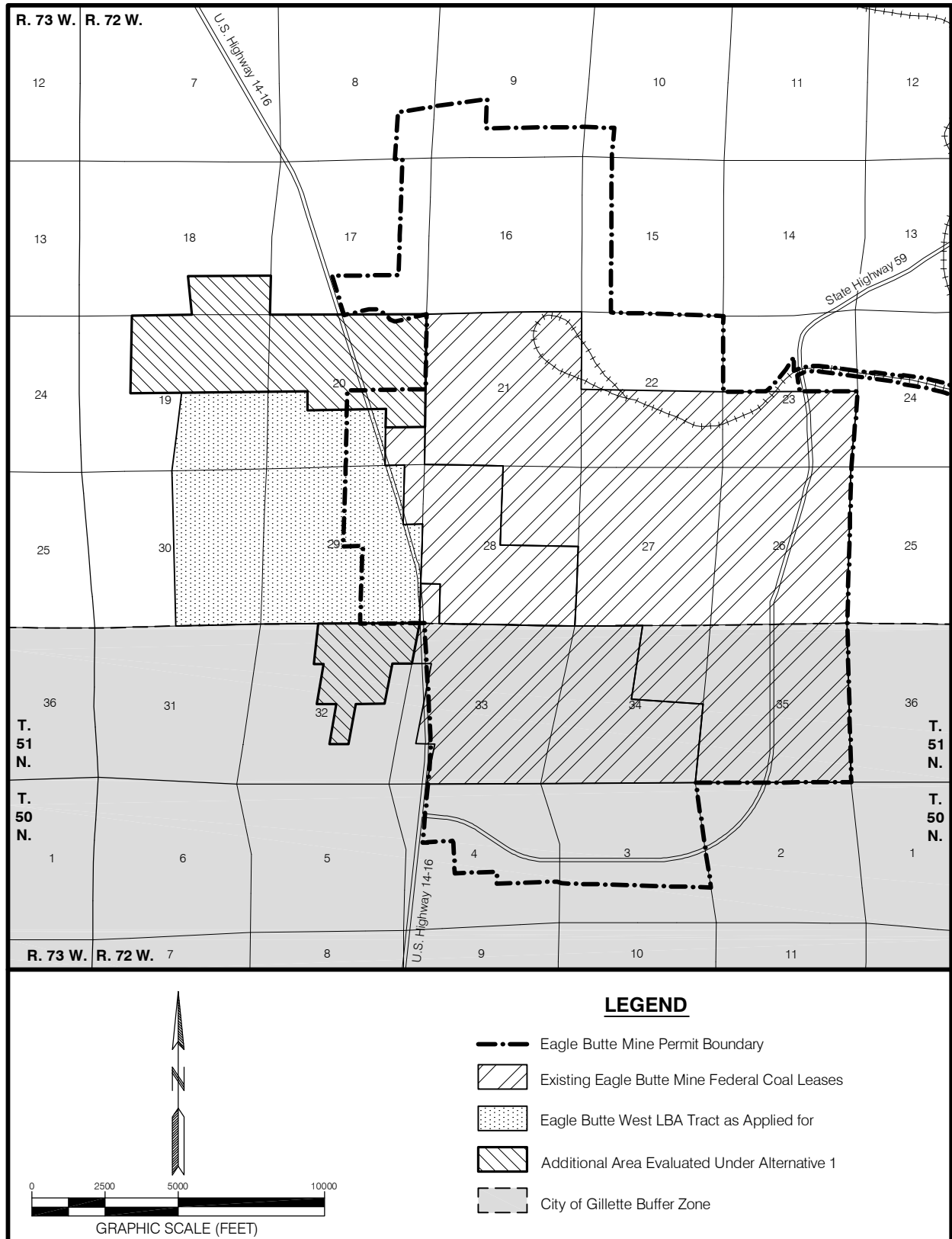


Figure 2. Eagle Butte West LBA Tract Alternatives.

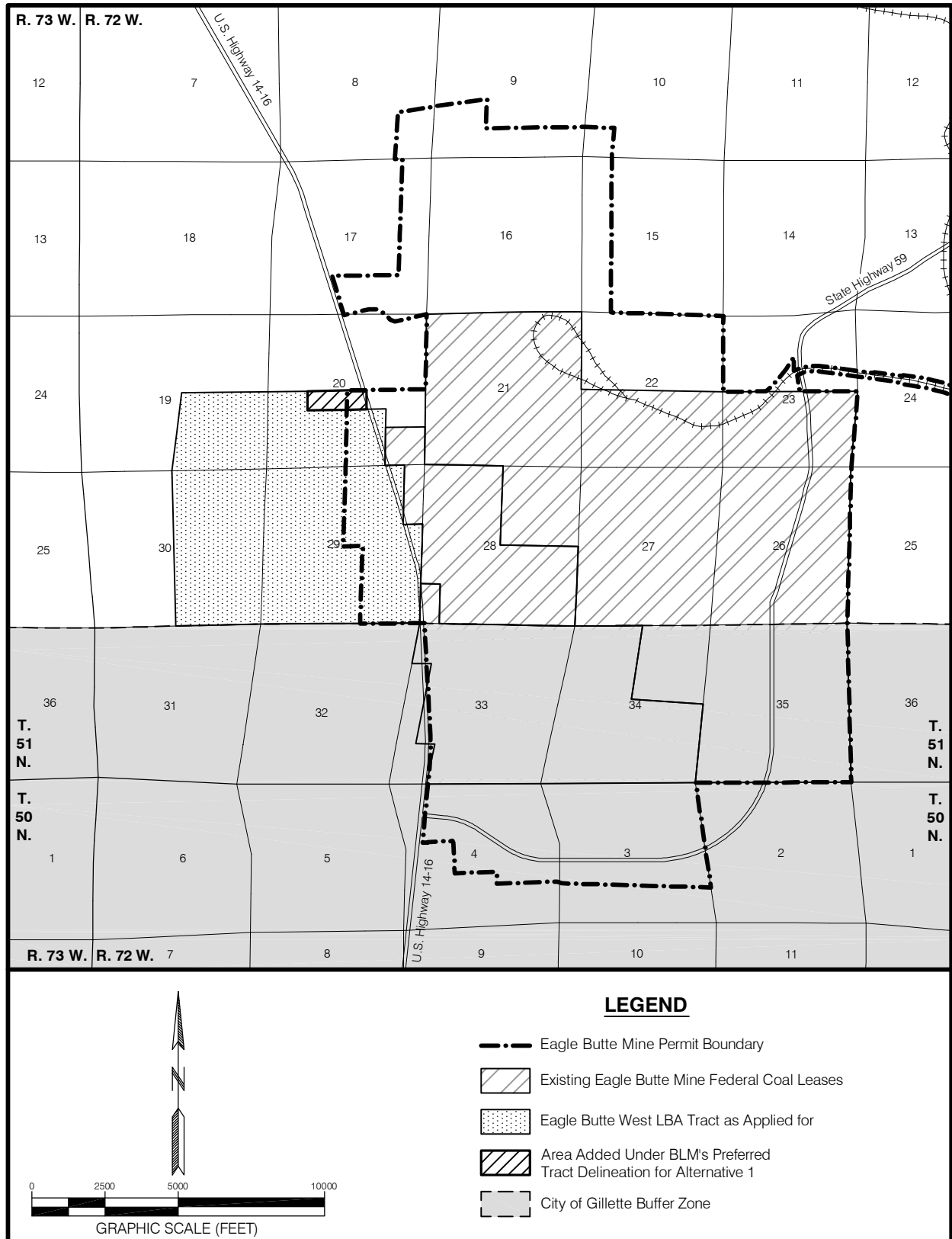


Figure 3. Eagle Butte West LBA Preferred Alternative Tract Configuration.

APPENDIX 2

**BUREAU OF LAND MANAGEMENT
SPECIAL COAL LEASE STIPULATIONS
AND COAL LEASE FORM 3400-12**

SPECIAL STIPULATIONS

In addition to observing the general obligations and standards of performance set out in the current regulations, the lessee shall comply with and be bound by the following special stipulations.

These stipulations are also imposed upon the lessee's agents and employees. The failure or refusal of any of these persons to comply with these stipulations shall be deemed a failure of the lessee to comply with the terms of the lease. The lessee shall require his agents, contractors and subcontractors involved in activities concerning this lease to include these stipulations in the contracts between and among them. These stipulations may be revised or amended, in writing, by the mutual consent of the lessor and the lessee at any time to adjust to changed conditions or to correct an oversight.

(a) *CULTURAL RESOURCES*

(1) Before undertaking any activities that may disturb the surface of the leased lands, the lessee shall conduct a cultural resource intensive field inventory in a manner specified by the Authorized Officer of the BLM or of the surface managing agency, if different, on portions of the mine plan area and adjacent areas, or exploration plan area, that may be adversely affected by lease-related activities and which were not previously inventoried at such a level of intensity. The inventory shall be conducted by a qualified professional cultural resource specialist (i.e., archeologist, historian, historical architect, as appropriate), approved by the Authorized Officer of the surface managing agency (BLM, if the surface is privately owned), and a report of the inventory and recommendations for protecting any cultural resources identified shall be submitted to the Regional Director of the Western Region of the Office of Surface Mining (the Western Regional Director), the Authorized Officer of the BLM, if activities are associated with coal exploration outside an approved mining permit area (hereinafter called Authorized Officer), and the Authorized Officer of the surface managing agency, if different. The lessee shall undertake measures, in accordance with instructions from the Western Regional Director, or Authorized Officer, to protect cultural resources on the leased lands. The lessee shall not commence the surface disturbing activities until permission to proceed is given by the Western Regional Director or Authorized Officer.

(2) The lessee shall protect all cultural resource properties that have been determined eligible to the National Register of Historic Places within the lease area from lease-related activities until the cultural resource mitigation measures can be implemented as part of an approved mining and reclamation or exploration plan unless modified by mutual agreement in consultation with the State Historic Preservation Officer.

(3) The cost of conducting the inventory, preparing reports, and carrying out mitigation measures shall be borne by the lessee.

(4) If cultural resources are discovered during operations under this lease, the lessee shall immediately bring them to the attention of the Western Regional Director or Authorized Officer, or the Authorized Officer of the surface managing agency, if the Western Regional

SPECIAL STIPULATIONS

Director is not available. The lessee shall not disturb such resources except as may be subsequently authorized by the Western Regional Director or Authorized Officer.

Within two (2) working days of notification, the Western Regional Director or Authorized Officer will evaluate or have evaluated any cultural resources discovered and will determine if any action may be required to protect or preserve such discoveries. The cost of data recovery for cultural resources discovered during lease operations shall be borne by the lessee unless otherwise specified by the Authorized Officer of the BLM or of the surface managing agency, if different.

(5) All cultural resources shall remain under the jurisdiction of the United States until ownership is determined under applicable law.

(b) *PALEONTOLOGICAL RESOURCES*

If paleontological resources, either large and conspicuous, and/or of significant scientific value are discovered during mining operations, the find will be reported to the Authorized Officer immediately. Mining operations will be suspended within 250 feet of said find. An evaluation of the paleontological discovery will be made by a BLM-approved professional paleontologist within five (5) working days, weather permitting, to determine the appropriate action(s) to prevent the potential loss of any significant paleontological value. Operations within 250 feet of such discovery will not be resumed until written authorization to proceed is issued by the Authorized Officer. The lessee will bear the cost of any required paleontological appraisals, surface collection of fossils, or salvage of any large conspicuous fossils of significant scientific interest discovered during the operations.

(c) *THREATENED, ENDANGERED, CANDIDATE, or OTHER SPECIAL STATUS PLANT and ANIMAL SPECIES*

The lease area may now or hereafter contain plants, animals, or their habitats determined to be threatened or endangered under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*, or that have other special status. The Authorized Officer may recommend modifications to exploration and development proposals to further conservation and management objectives or to avoid activity that will contribute to a need to list such species or their habitat or to comply with any biological opinion issued by the Fish and Wildlife Service for the Proposed Action. The Authorized Officer will not approve any ground-disturbing activity that may affect any such species or critical habitat until it completes its obligations under applicable requirements of the Endangered Species Act. The Authorized Officer may require modifications to, or disapprove a proposed activity that is likely to result in jeopardy to the continued existence of a proposed or listed threatened or endangered species, or result in the destruction or adverse modification of designated or proposed critical habitat.

The lessee shall comply with instructions from the Authorized Officer of the surface managing agency (BLM, if the surface is private) for ground disturbing activities associated with coal exploration on federal coal leases prior to approval of a mining and reclamation permit or outside an approved mining and reclamation permit area. The lessee shall comply with instructions from

SPECIAL STIPULATIONS

the Authorized Officer of the Office of Surface Mining Reclamation and Enforcement, or his designated representative, for all ground disturbing activities taking place within an approved mining and reclamation permit area or associated with such a permit.

(d) *MULTIPLE MINERAL DEVELOPMENT*

Operations will not be approved which, in the opinion of the Authorized Officer, would unreasonably interfere with the orderly development and/or production from a valid existing mineral lease issued prior to this one for the same lands.

(e) *OIL AND GAS/COAL RESOURCES*

The BLM realizes that coal mining operations conducted on Federal coal leases issued within producing oil and gas fields may interfere with the economic recovery of oil and gas; just as Federal oil and gas leases issued in a Federal coal lease area may inhibit coal recovery. BLM retains the authority to alter and/or modify the resource recovery and protection plans for coal operations and/or oil and gas operations on those lands covered by Federal mineral leases so as to obtain maximum resource recovery.

(f) *RESOURCE RECOVERY AND PROTECTION*

Notwithstanding the approval of a resource recovery and protection plan (R2P2) by the BLM, lessor reserves the right to seek damages against the operator/lessee in the event (i) the operator/lessee fails to achieve maximum economic recovery (MER) (as defined at 43 CFR 3480.0-5(21)) of the recoverable coal reserves or (ii) the operator/lessee is determined to have caused a wasting of recoverable coal reserves. Damages shall be measured on the basis of the royalty that would have been payable on the wasted or unrecovered coal.

The parties recognize that under an approved R2P2, conditions may require a modification by the operator/lessee of that plan. In the event a coal bed or portion thereof is not to be mined or is rendered unmineable by the operation, the operator/lessee shall submit appropriate justification to obtain approval by the Authorized Officer to leave such reserves unmined. Upon approval by the Authorized Officer, such coal beds or portions thereof shall not be subject to damages as described above. Further, nothing in this section shall prevent the operator/lessee from exercising its right to relinquish all or portion of the lease as authorized by statute and regulation.

In the event the Authorized Officer determines that the R2P2, as approved, will not attain MER as the result of changed conditions, the Authorized Officer will give proper notice to the operator/lessee as required under applicable regulations. The Authorized Officer will order a modification if necessary, identifying additional reserves to be mined in order to attain MER. Upon a final administrative or judicial ruling upholding such an ordered modification, any reserves left unmined (wasted) under that plan will be subject to damages as described in the first paragraph under this section.

Subject to the right to appeal hereinafter set forth, payment of the value of the royalty on such unmined recoverable coal reserves shall become due and payable upon determination by the

SPECIAL STIPULATIONS

Authorized Officer that the coal reserves have been rendered unmineable or at such time that the operator/lessee has demonstrated an unwillingness to extract the coal.

The BLM may enforce this provision either by issuing a written decision requiring payment of the Mineral Management Service demand for such royalties, or by issuing a notice of non-compliance. A decision or notice of non-compliance issued by the lessor that payment is due under this stipulation is appealable as allowed by law.

(g) *PUBLIC LAND SURVEY PROTECTION*

The lessee will protect all survey monuments, witness corners, reference monuments, and bearing trees against destruction, obliteration, or damage during operations on the lease areas. If any monuments, corners or accessories are destroyed, obliterated, or damaged by this operation, the lessee will hire an appropriate county surveyor or registered land surveyor to reestablish or restore the monuments, corners, or accessories at the same location, using surveying procedures in accordance with the "Manual of Surveying Instructions for the Survey of the Public Lands of the United States." The survey will be recorded in the appropriate county records, with a copy sent to the Authorized Officer.

(h) *BUFFER ZONES FOR RIGHTS-OF-WAY OF PUBLIC ROADS, SCHOOL BUILDING, AND OCCUPIED DWELLINGS*

(1) No mining activity of any kind may be conducted within the U.S. Highway 14-16 right-of-way and associated 100-foot buffer zone while the highway remains in its current (2007) location. The Wyoming Department of Transportation has accepted a proposal from Foundation Coal West, Inc. to relocate U.S. Highway 14-16. Accordingly, the lessee shall recover all legally and economically recoverable coal from all leased lands within the current U. S. Highway 14-16 right-of-way and associated buffer zone after the highway is moved. The lessee shall pay all royalties on any legally and economically recoverable coal which it fails to mine without the written permission of the Authorized Officer.

(2) No mining of any kind may be conducted within 300 feet of the Rawhide public school building, 100 feet of the right-of-way of the public road to the school, and 300 feet of any occupied dwellings. The lessee shall recover all legally and economically recoverable coal from all leased lands not within these buffer zones. Provided written permission is given to mine within these buffer zones by the school's authorized officer and owners of the occupied dwellings, the lessee shall recover all legally and economically recoverable coal from all leased lands within the foregoing buffer zones. The lessee shall pay all royalties on any legally and economically recoverable coal which it fails to mine without the written permission of the Authorized Officer.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

FORM APPROVED
OMB NO. 1004-0073
Expires: March 31, 2010

Serial Number

COAL LEASE

PART 1. LEASE RIGHTS GRANTED

This lease, entered into by and between the UNITED STATES OF AMERICA, hereinafter called lessor, through the Bureau of Land Management (BLM), and
(Name and Address)

hereinafter called lessee, is effective (date) / / , for a period of 20 years and for so long thereafter as coal is produced in commercial quantities from the leased lands, subject to readjustment of lease terms at the end of the 20th lease year and each 10-year period thereafter.

Sec. 1. This lease is issued pursuant and subject to the terms and provisions of the:

☐ Mineral Lands Leasing Act of 1920, Act of February 25, 1920, as amended, 41 Stat. 437, 30 U.S.C. 181-287, hereinafter referred to as the Act;

☐ Mineral Leasing Act for Acquired Lands, Act of August 7, 1947, 61 Stat. 913, 30 U.S.C. 351-359;

and to the regulations and formal orders of the Secretary of the Interior which are now or hereafter in force, when not inconsistent with the express and specific provisions herein.

Sec. 2. Lessor, in consideration of any bonuses, rents, and royalties to be paid, and the conditions and covenants to be observed as herein set forth, hereby grants and leases to lessee the exclusive right and privilege to drill for, mine, extract, remove, or otherwise process and dispose of the coal deposits in, upon, or under the following described lands:

containing _____ acres, more or less, together with the right to construct such works, buildings, plants, structures, equipment and appliances and the right to use such on-lease rights-of-way which may be necessary and convenient in the exercise of the rights and privileges granted, subject to the conditions herein provided.

PART II. TERMS AND CONDITIONS

Sec. 1. (a) RENTAL RATE - Lessee must pay lessor rental annually and in advance for each acre or fraction thereof during the continuance of the lease at the rate of \$ _____ for each lease year.

(b) RENTAL CREDITS - Rental will not be credited against either production or advance royalties for any year.

Sec. 2. (a) PRODUCTION ROYALTIES - The royalty will be _____ percent of the value of the coal as set forth in the regulations. Royalties are due to lessor the final day of the month succeeding the calendar month in which the royalty obligation accrues.

(b) ADVANCE ROYALTIES - Upon request by the lessee, the BLM may accept, for a total of not more than 10 years, the payment of advance royalties in lieu of continued operation, consistent with the regulations. The advance royalty will be based on a percent of the value of a minimum number of tons determined in the manner established by the advance royalty regulations in effect at the time the lessee requests approval to pay advance royalties in lieu of continued operation.

Sec. 3. BONDS - Lessee must maintain in the proper office a lease bond in the amount of \$ _____. The BLM may require an increase in this amount when additional coverage is determined appropriate.

Sec. 4. DILIGENCE - This lease is subject to the conditions of diligent development and continued operation, except that these conditions are excused

when operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee. The lessor, in the public interest, may suspend the condition of continued operation upon payment of advance royalties in accordance with the regulations in existence at the time of the suspension. Lessee's failure to produce coal in commercial quantities at the end of 10 years will terminate the lease. Lessee must submit an operation and reclamation plan pursuant to Section 7 of the Act not later than 3 years after lease issuance.

The lessor reserves the power to assent to or order the suspension of the terms and conditions of this lease in accordance with, inter alia, Section 39 of the Mineral Leasing Act, 30 U.S.C. 209.

5. LOGICAL MINING UNIT (LMU) - Either upon approval by the lessor or the lessee's application or at the direction of the lessor, this lease will become an LMU or part of an LMU, subject to the provisions set forth in the regulations.

The stipulations established in an LMU approval in effect at the time of LMU approval will supersede the relevant inconsistent terms of this lease so long as the lease remains committed to the LMU. If the LMU of which this lease is a part is dissolved, the lease will then be subject to the lease terms which would have been applied if the lease had not been included in an LMU.

Sec. 6. DOCUMENTS, EVIDENCE AND INSPECTION - At such times and in such form as lessor may prescribe, lessee must furnish detailed statements showing the amounts and quality of all products removed and sold from the lease, the proceeds therefrom, and the amount used for production purposes or unavoidably lost.

Lessee must keep open at all reasonable times for the inspection by BLM the leased premises and all surface and underground improvements, works, machinery, ore stockpiles, equipment, and all books, accounts, maps, and records relative to operations, surveys, or investigations on or under the leased lands.

Lessee must allow lessor access to and copying of documents reasonably necessary to verify lessee compliance with terms and conditions of the lease.

While this lease remains in effect, information obtained under this section will be closed to inspection by the public in accordance with the Freedom of Information Act (5 U.S.C. 552).

Sec. 7. DAMAGES TO PROPERTY AND CONDUCT OF OPERATIONS - Lessee must comply at its own expense with all reasonable orders of the Secretary, respecting diligent operations, prevention of waste, and protection of other resources.

Lessee must not conduct exploration operations, other than casual use, without an approved exploration plan. All exploration plans prior to the commencement of mining operations within an approved mining permit area must be submitted to the BLM.

Lessee must carry on all operations in accordance with approved methods and practices as provided in the operating regulations, having due regard for the prevention of injury to life, health, or property, and prevention of waste, damage or degradation to any land, air, water, cultural, biological, visual, and other resources, including mineral deposits and formations of mineral deposits not leased hereunder, and to other land uses or users. Lessee must take measures deemed necessary by lessor to accomplish the intent of this lease term. Such measures may include, but are not limited to, modification to proposed siting or design of facilities, timing of operations, and specification of interim and final reclamation procedures. Lessor reserves to itself the right to lease, sell, or otherwise dispose of the surface or other mineral deposits in the lands and the right to continue existing uses and to authorize future uses upon or in the leased lands, including issuing leases for mineral deposits not covered hereunder and approving easements or rights-of-way. Lessor must condition such uses to prevent unnecessary or unreasonable interference with rights of lessee as may be consistent with concepts of multiple use and multiple mineral development.

Sec. 8. PROTECTION OF DIVERSE INTERESTS, AND EQUAL OPPORTUNITY - Lessee must: pay when due all taxes legally assessed and levied under the laws of the State or the United States; accord all employees complete freedom of purchase; pay all wages at least twice each month in lawful money of the United States; maintain a safe working environment in accordance with standard industry practices; restrict the workday to not more than 8 hours in any one day for underground workers, except in emergencies; and take measures necessary to protect the health and safety of the public. No person under the age of 16 years should be employed in any mine below the surface. To the extent that laws of the State in which the lands are situated are more restrictive than the provisions in this paragraph, then the State laws apply.

Lessee will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor. Neither lessee nor lessee's subcontractors should maintain segregated facilities.

Sec. 15. SPECIAL STIPULATIONS

Sec. 9. (a) TRANSFERS

- ☐ This lease may be transferred in whole or in part to any person, association or corporation qualified to hold such lease interest.
- ☐ This lease may be transferred in whole or in part to another public body or to a person who will mine coal on behalf of, and for the use of, the public body or to a person who for the limited purpose of creating a security interest in favor of a lender agrees to be obligated to mine the coal on behalf of the public body.
- ☐ This lease may only be transferred in whole or in part to another small business qualified under 13 CFR 121.

Transfers of record title, working or royalty interest must be approved in accordance with the regulations.

(b) RELINQUISHMENT - The lessee may relinquish in writing at any time all rights under this lease or any portion thereof as provided in the regulations. Upon lessor's acceptance of the relinquishment, lessee will be relieved of all future obligations under the lease or the relinquished portion thereof, whichever is applicable.

Sec. 10. DELIVERY OF PREMISES, REMOVAL OF MACHINERY, EQUIPMENT, ETC. - At such time as all portions of this lease are returned to lessor, lessee must deliver up to lessor the land leased, underground timbering, and such other supports and structures necessary for the preservation of the mine workings on the leased premises or deposits and place all workings in condition for suspension or abandonment. Within 180 days thereof, lessee must remove from the premises all other structures, machinery, equipment, tools, and materials that it elects to or as required by the BLM. Any such structures, machinery, equipment, tools, and materials remaining on the leased lands beyond 180 days, or approved extension thereof, will become the property of the lessor, but lessee may either remove any or all such property or continue to be liable for the cost of removal and disposal in the amount actually incurred by the lessor. If the surface is owned by third parties, lessor will waive the requirement for removal, provided the third parties do not object to such waiver. Lessee must, prior to the termination of bond liability or at any other time when required and in accordance with all applicable laws and regulations, reclaim all lands the surface of which has been disturbed, dispose of all debris or solid waste, repair the offsite and onsite damage caused by lessee's activity or activities incidental thereto, and reclaim access roads or trails.

Sec. 11. PROCEEDINGS IN CASE OF DEFAULT - If lessee fails to comply with applicable laws, existing regulations, or the terms, conditions and stipulations of this lease, and the noncompliance continues for 30 days after written notice thereof, this lease will be subject to cancellation by the lessor only by judicial proceedings. This provision will not be construed to prevent the exercise by lessor of any other legal and equitable remedy, including waiver of the default. Any such remedy or waiver will not prevent later cancellation for the same default occurring at any other time.

Sec. 12. HEIRS AND SUCCESSORS-IN-INTEREST - Each obligation of this lease will extend to and be binding upon, and every benefit hereof will inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

Sec. 13. INDEMNIFICATION - Lessee must indemnify and hold harmless the United States from any and all claims arising out of the lessee's activities and operations under this lease.

Sec. 14. SPECIAL STATUTES - This lease is subject to the Clean Water Act (33 U.S.C. 1252 et seq.), the Clean Air Act (42 U.S.C. 4274 et seq.), and to all other applicable laws pertaining to exploration activities, mining operations and reclamation, including the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.).

THE UNITED STATES OF AMERICA

(Company or Lessee Name)

By _____

(Signature of Lessee)

(BLM)

(Title)

(Title)

(Date)

(Date)

Title 18 U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

NOTICES

The Privacy Act of 1974 and the regulation in 43 CFR 2.48(d) provide that you be furnished with the following information in connection with information required by this application.

AUTHORITY: 30 U.S.C. 181-287 and 30 U.S.C. 351-359.

PRINCIPAL PURPOSE: BLM will use the information you provide to process your application and determine if you are eligible to hold a lease on BLM Land.

ROUTINE USES: BLM will only disclose the information according to the regulations at 43 CFR 2.56(d).

EFFECT OF NOT PROVIDING INFORMATION: Disclosing the information is necessary to receive a benefit. Not disclosing the information may result in BLM's rejecting your request for a lease.

The Paperwork Reduction Act of 1995 requires us to inform you that:

The BLM collects this information to authorize and evaluate proposed exploration and mining operations on public lands.

Response to the provisions of this lease form is mandatory for the types of activities specified.

The BLM would like you to know that you do not have to respond to this or any other Federal agency-sponsored information collection unless it displays a currently valid OMB control number.

BURDEN HOURS STATEMENT: Public reporting burden for this form is estimated to average one hour per response including the time for reading the instructions and provisions, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to U.S. Department of the Interior, Bureau of Land Management (1004-0073), Bureau Information Collection Clearance Officer (WO-630), 1849 C Street, Mail Stop 401 LS, Washington, D.C. 20240.

APPENDIX 3

CONCURRENCE LETTER FROM THE U.S. FISH AND WILDLIFE SERVICE



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
5353 Yellowstone Road, Suite 308A
Cheyenne, Wyoming 82009

In Reply Refer To:
ES-61411/W.02/WY07I0330

BUREAU OF LAND
MANAGEMENT
CASPER FIELD OFFICE
2007 JUL 23 A 6:56
JUL 20 2007

Memorandum

To: Mike Karbs, Assistant Field Office Manager, Solid Minerals. Bureau of Land Management, Casper Field Office, Casper, Wyoming
Attn: Nancy Doelger

From: Brian T. Kelly, Field Supervisor, U.S. Fish and Wildlife Service, Wyoming Field Office, Cheyenne, Wyoming *Patricia DeLent for*

Subject: Eagle Butte West Coal Lease by Application, Final Biological Assessment

Thank you for your letter, dated June 26, 2007, and the final biological assessment (BA) for the proposed Eagle Butte West Coal Lease by Application (LBA). The Bureau of Land Management (BLM) is proposing to offer the Eagle Butte West tract, located west and immediately adjacent to the Eagle Butte Mine, for lease. The Eagle Butte West tract is located in Sections 19, 20, 29 and 30 in T 51N/R72W, Campbell County, Wyoming. The coal estate underlying the Eagle Butte West tract is owned by the federal government and administered by the BLM. The surface estate is privately owned by Foundation West Coal, LLC. The tract encompasses approximately 1400 acres of surface land and contains approximately 228 million tons of coal.

The federally listed species addressed in the BA for the Eagle Butte West Coal LBA are the bald eagle (*Haliaeetus leucocephalus*), Ute ladies'-tresses (*Spiranthes diluvialis*) and the black-footed ferret (*Mustela nigripes*). As stated in the BA, the BLM has determined that the proposed Eagle Butte West Coal LBA will have 'no effect' on the black-footed ferret. The BLM has also determined that the Eagle Butte West LBA 'may affect, but is not likely to adversely affect' the bald eagle and Ute ladies'-tresses. Our office has reviewed the BA and the potential effects of the proposed Eagle Butte West Coal LBA on bald eagle and Ute ladies'-tresses in accordance with section 7(a)(2) of the Endangered Species Act (Act) of 1973, as amended (50 CFR §402.13), and this letter transmits the U.S. Fish and Wildlife Service's (Service) concurrence.

Bald Eagle: As documented in the BA there are no bald eagle nests or communal winter roost sites within 1 mile of the Eagle Butte West tract. Bald eagles have been infrequently observed, foraging and perching in windbreaks in Sections 20 and 29, T 51N/R 72W and near a water impoundment in Section 32, T 51N/ R 72W during winter. There are, however, no concentrated sources of carrion or prey for eagles in the area. Therefore impacts to eagles due to leasing of coal on the Eagle Butte tract are anticipated to be limited to winter foraging and perching

opportunities. Eagles may be temporarily displaced by mining of the tract lease, but the tract does not provide consistent, reliable or concentrated food sources, and foraging habitat lost during mining would be expected to be replaced by reclamation on mined-out areas.

Based on information in the BA that bald eagle foraging opportunities will not be significantly impacted, and that no bald eagle nests or winter communal roosts occur within one mile of the lease tract, the Service concurs with the BLM that leasing of the Eagle Butte West tract 'may affect, but is not likely to adversely affect' the bald eagle.

Ute ladies'-tresses: As documented in the BA for the Eagle Butte West Coal LBA, no Ute ladies'-tresses orchids were found during surveys conducted in the coal lease tract in late August and September of 2004 and in August 2005. As stated in the BA, surveys were conducted in all areas of suitable habitat during the period of year when the orchid is expected to be in flower. Additionally, although habitat was considered suitable for survey efforts, the quality of potential Ute ladies'-tresses habitat in the area may be sub-optimal due to heavy and moderately saline soils and the heavy colonization of aggressive rhizomatous graminoids. Based on the information that the Ute ladies'-tresses orchid is unlikely to occur in the area, the Service concurs with the BLM that leasing of the Eagle Butte West tract 'may affect, but is not likely to adversely affect' Ute ladies'-tresses.

This concludes informal consultation pursuant to the regulations implementing the Act. This project should be re-analyzed if new information reveals effects of the action that may affect listed or proposed species or designated or proposed critical habitat in a manner or to an extent not considered in this consultation; if the action is subsequently modified in a manner that causes an effect to a listed or proposed species or designated or proposed critical habitat that was not considered in this consultation; and/or, if a new species is listed or critical habitat is designated that may be affected by this project.

We acknowledge that the BLM has determined that the Eagle Butte West LBA will have "no effect" on the black-footed ferret. When the BLM makes a "no effect" determination, concurrence from the Service is not required, although we appreciate receiving a copy of the information you used to make that determination for our records.

We thank the BLM for continued efforts to ensure the conservation of federally listed species. If you have any questions or comments regarding this letter, please contact Trish Sweanor at the letterhead address or phone (307) 772-2374, extension 239.

cc: BLM, Buffalo FO, Wildlife Biologist, Buffalo, WY (A. Kasic)
BLM, Buffalo FO, Wildlife Biologist, Buffalo, WY (L. Gerard)
WGFD, Statewide Habitat Protection Coordinator, Cheyenne, WY (V. Stelter)
WGFD, Non-Game Coordinator, Lander, WY (B. Oakleaf)

APPENDIX 4

PUBLIC COMMENTS ON THE FEIS AND BLM RESPONSES

Responses to Comments

The availability period for the Final Environmental Impact Statement (EIS) for the Eagle Butte West Coal Lease Application began when the EPA published the Notice of Availability for the final EIS on August 31, 2007, and ended on October 1, 2007. BLM received a letter from Wyoming Game and Fish Department, indicating that their previous comments had been addressed in the final EIS and that they have no further comment. BLM also received a series of email and attachments from one member of the public, Leslie Glustrom. Although the information provided to BLM by Ms Glustrom was not received while the EIS was being prepared, it was reviewed and evaluated during preparation of the ROD and will be considered in the preparation of future NEPA documents. Excerpts from the comments received from Leslie Glustrom are reprinted below in a **bold** font and the responses are in a regular font. The excerpts reprinted below were selected as representative of the issues and concerns expressed by Ms Glustrom in her comments.

Comment Response 1: Email Messages and Attachments from Leslie Glustrom

“A very considerable number of the hundreds of scientific papers on climate change (as well as those on mercury and other pollutants) should have been considered in the FEIS.”

“In addition, there does not appear to be any analysis of the serious environmental implications of coal ash management and disposal in the EIS.”

“While the EIS Team has done a commendable job of analyzing and organizing the Wyoming-specific impacts, unfortunately they have failed to give anywhere near adequate consideration to the most important issue, which is what happens when the coal that would be leased as a result of the expansion of the Eagle Butte Mine is burned. There are massively serious environmental consequences and it is an oversight of monumental proportions to have given them little or no consideration.”

Buried on pages 3-181 and 3-182, the FEIS acknowledges the existence of greenhouse gases and the role of coal burning in contributing to GHG emissions, but it fails to provide any further analysis of the consequences of the accumulation of greenhouse gases in our atmosphere.

The implications of the burning of 200 million metric tons of coal and the resultant increase in CO₂ in the atmosphere and the effect on the temperature of the planet should be considered before issuing a final decision to lease over 200 million metric tons of coal in the Eagle Butte West Coal Lease Application.”

As stated in the Dear Reader Letter, the purpose of the Final EIS for the Eagle Butte West Coal Lease Application is to inform the public and the BLM decision makers of the impacts of leasing the Eagle Butte West LBA Tract to an existing mine and to evaluate alternatives to leasing the Federal coal included in the tract as applied for. The EIS evaluates the impacts of mining the coal because that is a logical consequence of issuing a lease to an existing mine, although BLM is not

Responses to Comments

authorizing mining operations by issuing a lease and is not the authorizing agency for those operations.

The EIS identifies global warming as an issue of concern and identifies greenhouse gases emitted by coal-burning power plants as contributing to global warming. It also estimates the percentage of greenhouse gases that can be attributed to burning the coal that is produced in the Powder River Basin to generate power. Specifically, the FEIS states that coal produced in the Powder River Basin is estimated to have been responsible for approximately 12.5% of the estimated anthropomorphic CO₂ emissions in 2005, based on reports published by the Energy Information Administration. The EIS does not identify the proportion of those estimated emissions that would be attributable to the Eagle Butte Mine. Based on the fact that the Eagle Butte Mine produced approximately 6.2 percent of the total coal produced in the PRB in 2005, according to the Annual Report of the Wyoming State Inspector of Mines, the Eagle Butte Mine is estimated to have been responsible for approximately 0.8 percent of the US anthropomorphic CO₂ emissions in 2005.

There are numerous coal-fired power plants and numerous sources of coal for those power plants in this country and around the world. There are variations in the chemical composition of the emissions and the solid wastes produced by burning coal from different sources, due to the amount, type, and chemical form of the various trace elements in the coal. However, the impacts of burning coal to generate electricity (emissions of greenhouse gases, mercury and other hazardous substances, creation of solid waste, etc.) are similar, regardless of the source of the coal.

The EIS does not address those impacts in detail because the ability of coal-fired power plants to continue operations is not dependent on a decision by BLM to issue a lease for the Federal coal in the Eagle Butte West LBA Tract or in other maintenance tracts in the Powder River Basin. It is true that coal produced by the Eagle Butte Mine is currently being burned to generate electricity and is contributing to U.S. anthropomorphic CO₂ emissions as a result. It is also true that, if a decision is made to lease the Federal coal included in the Eagle Butte West LBA Tract and if that coal is sold to generate electricity when it is mined, emissions of greenhouse gases attributable to coal from the Eagle Butte Mine would occur for a longer period of time. It is not true that a decision by BLM to reject the Eagle Butte West Coal Lease Application would have the effect of proportionately reducing greenhouse gas emissions caused by burning coal, now or in the future. Coal is burned to generate electricity in response to demand from consumers and businesses and in compliance with existing policies, rules, and regulations. Eliminating one source of coal would not affect that demand and there are numerous other sources which can supply the coal, if the demand for the energy is there and compliance with the policies, rules, and regulations can be achieved.

Responses to Comments

Additionally, the use of the Federal coal is not determined when it is leased or when a new coal lease is permitted for mining. The use of coal is determined when it is mined and sold. Although almost all of the coal that is being mined in the Powder River Basin is currently used by existing pulverized coal-fired power plants to generate electricity, that may not be the case when the Federal coal in the Eagle Butte West LBA Tract is actually mined and sold. After an application to lease Federal coal is received, it takes several years for BLM to complete the required procedures and issue a lease. After a Federal coal lease is issued, it takes several years for the operator to get a permit to mine the coal. In Wyoming, that permit comes from the Wyoming Department of Environmental Quality Land Quality Division (WDEQ/LQD). Once the mine has an approved permit, additional time is required to uncover and start removing the coal. BLM estimates that the Eagle Butte West LBA Tract contains approximately 255 millions tons of mineable Federal coal. As indicated in the EIS, the Eagle Butte Mine has a permit to produce up to 35 million tons of coal annually and they are currently producing coal at a rate of about 25 million tons per year. Assuming that the Eagle Butte Mine is the successful bidder at a coal lease sale, it would take them from seven to ten years to recover the Federal coal included in the tract at those rates of production. There are new technologies being developed which would produce electricity from coal with fewer emissions and sequester CO₂. Plants using those technologies may be in operation by the time the Federal coal in the Eagle Butte West LBA Tract is actually mined and sold. There is no commitment at the time of leasing as to how the coal will be used when it is mined.

Finally, regulatory limits on emissions by coal-fired power plants have been, are currently being, and will undoubtedly continue to be enacted. Congress is proceeding with proposals to limit U.S. emissions linked to global warming and the likelihood that this will happen is already affecting plans to build new pulverized coal-fired power plants as well as proposals to build coal gasification plants (References: Washington Post, 10/4/2007, “Lawmakers Will Proceed on Climate Plan,” by Juliet Eilperin, and Casper Star Tribune, 10/11/2007, “Clean-Coal Investors Plead for Regulation,” by Dustin Bleizeffer). The EPA implemented rules in 2005 to reduce emissions of mercury by power plants, which were then challenged by various states and groups who want more stringent rules. It seems very likely that regulatory limits will continue to be imposed on emissions of greenhouse gases and those limits will affect the use of and emissions from the Federal coal in the Eagle Butte West LBA Tract at the time it is actually mined.

“On page 3-182, the FEIS merely concludes:

...”leasing the Eagle Butte West LBA Tract to an existing mine under the Proposed Action of Alternative 1 would not be expected to result in increased or new emissions of CO₂ from coal-fired power plants.”

Responses to Comments

This statement is incorrect and completely inadequate. The mining of new coal will certainly lead to new emissions of CO₂ and to fail to recognize that –and to recognize the cumulative impacts of the release of CO₂ and their impact on the environment of the entire planet is a gross oversight that must be corrected.

A similar error in logic and analysis occurs on page 3-182 with respect to emissions of mercury.

Similarly, there are many other pollutants (both criteria pollutants and hazardous ones) that arise when coal is burned and these have serious and deleterious effects on the environment, including very serious cumulative impacts, and these must all be addressed before issuing a decision on the FEIS.”

Under the Proposed Action and Alternative 1, the EIS assumes that the estimated 255 million tons of mineable Federal coal included in the Eagle Butte West LBA Tract will be mined by the existing Eagle Butte Mine at currently permitted levels, which would extend coal production at the Eagle Butte Mine for an additional seven to ten years at currently permitted rates. The discussions about CO₂ and mercury emissions in Section 3.18 of the FEIS identify that burning coal to generate electricity produces greenhouse gas emissions that contribute to global warming and mercury emissions that have adverse health effects; that coal mined in the PRB and burned in coal-fired power plants contributes to the emissions of greenhouse gases and mercury; and that the Eagle Butte Mine plans to produce the coal included in the Eagle Butte West LBA Tract at currently permitted levels. This leads to the conclusion that emissions of greenhouse gases and mercury attributable to the Eagle Butte Mine would be extended for seven to ten additional years at approximately current levels if the Federal coal included in the Eagle Butte West LBA Tract is leased, mined at currently permitted levels, and used to generate electricity by a coal-fired power plant. Issuing a Federal coal lease for the Eagle Butte West LBA Tract would not result in the creation of new sources of anthropomorphic greenhouse gas or mercury emissions and the rates of anthropomorphic greenhouse gas or mercury emissions would not be expected to increase. Although the information leading to this conclusion is presented in the FEIS, the conclusion is not clearly stated. This conclusion has been restated in the ROD.

As discussed above, the impacts of burning coal to generate electricity (emissions of greenhouse gases, emissions of hazardous materials including mercury, and creation of solid waste from coal combustion) are similar, regardless of the source of the coal, and there are other sources of coal which would be available to meet the demand for power if the BLM made a decision to reject the application to lease for the Federal coal in the Eagle Butte West LBA Tract.

“Also, to comply with the National Environmental Policy Act, the EIS must consider the ability to produce electricity in other, carbon, and hazardous pollutant free means—including the production of electricity from solar, wind, and geothermal

Responses to Comments

resources—with special attention paid to the ability to produce electricity using Concentrated Solar Power which produces the steam for steam turbines using various arrays of “sunlight and mirrors” to produce the steam. My comments will provide further information on these alternatives—as well as the ability of energy efficiency to avoid all of the extremely serious environmental impacts that result from the burning of coal. These must all be carefully analyzed as alternatives before issuing a decision on the FEIS for the Eagle Butte West Coal Lease Application.

It would be silly to take over 200 million metric tons of coal out of the ground and turn it into CO₂ and release all the hazardous and other pollutants just to boil water and produce steam if we have commercially available technologies that can produce electricity without burning coal and avoid all of these environmental problems.

Before approving the Eagle Butte West Coal Leasing Application, the possibility of using energy efficiency to avoid turning all that coal into CO₂ and releasing mercury and all the other pollutants should be considered.”

Section 1502.14 of the National Environmental Policy Act (NEPA) regulations require Federal agencies to consider all reasonable alternatives to a proposal in preparing an EIS. The regulations also instruct agencies to include a no action alternative and to include reasonable alternatives even if they not within their jurisdiction. In the Council on Environmental Quality (CEQ) memorandum to agencies entitled “Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations”, response 2a states: “Reasonable alternatives include those that are practical or feasible from a technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.”

The proposal being analyzed in the Eagle Butte West Coal Lease Application EIS is the application from Foundation Coal West, Inc. to lease Federal coal adjacent to the Eagle Butte Mine. In response to this proposal, BLM can decide whether to offer the Federal coal for lease, which is analyzed under the Proposed Action and Alternative 1 in the EIS, or to reject the application, which is analyzed under Alternative 2 (the No Action Alternative) in the EIS. There are no decisions BLM can make with regard to this proposal which would determine how power would be generated by means other than burning coal or how energy could be used more efficiently. A decision by BLM to either lease or not lease the coal does not impact either the ability to generate power by means other than burning coal or to use energy more efficiently. As a result, those topics are not analyzed as alternatives in the EIS.

Development of alternate technologies for producing power and techniques for using energy more efficiently are progressing based on technical merit, economic feasibility, current and probable future restrictions on emissions which limit the use of fossil fuel-based technologies, and concerns about global warming.

Responses to Comments

Leasing or not leasing the Eagle Butte West LBA Tract will not affect that progress. Also, as discussed above, not leasing the Eagle Butte would not result in a proportionate reduction in the amount of coal burned to produce electricity because there are other sources of coal available to the coal-fired power plants.

“Attached are some recent opinion polls on climate change and energy. They were issued before the Final EIS on the Eagle Butte West Coal Lease Application was released in August 2007 so they should have been part of what was considered in the EIS process.”

As discussed above, the purpose of the Final EIS for the Eagle Butte West Coal Lease Application is to inform the public and the BLM decision makers of the impacts of leasing the Eagle Butte West LBA Tract to an existing mine and to evaluate alternatives to the proposal to lease the Federal coal included in the tract. Opinion polls do not provide factual scientific, technical or socioeconomic information that would help either a BLM decision maker or a member of the public understand the impacts of a decision to lease or not to lease a tract of Federal coal. As a result, the BLM did not consider opinion polls in preparing the Eagle Butte West Coal Lease Application EIS.

APPENDIX 5

U.S. Highway 14-16 Relocation Documents



Dave Freudenthal
Governor



John I. Cox
Director

Department of Transportation

16 EAST HAYSTACK LANE

SHERIDAN, WYOMING 82801

March 12, 2007

Owen Lindblom, P.E.
Civil Environmental Engineer
Foundation Coal West, Inc.
Eagle Butte Mine
P.O. Box 3040
Gillette, WY 82717-3040

Re: Foundation Coal West, Inc.
West Extension LBA Project
Campbell County
US 14/16 Relocation - Conceptual Study

Dear Mr. Lindblom:

This letter is in reference to and further amends the letter dated February 9, 2007 signed by B. Patrick Collins, P.E., Assistant Chief Engineer, regarding the acceptance of Foundation Coals proposal to relocate US 14/16 and to make the relocation alignment permanent. The Wyoming Department of Transportation accepts Foundation Coals proposal to relocate US 14/16 and to make the relocation alignment permanent. In addition, the Department understands that there are some risks involved, though such risks are believed to be minimal. However, if problems such as operational and/or safety issues develop, WYDOT may seek some recourse to the permanent utilization of the new alignment. If you have any questions or concerns regarding this matter please do not hesitate to contact me at 307-674-2300.

Sincerely,

Kaylana Houston

for Mark Gillett
District Engineer

cc: Delbert A. McOmie, P.E., Chief Engineer
B. Patrick Collins, P.E., Assistant Chief Engineer
Paul Bercich, P.E., Highway Development Engineer
G. Michael Hager, P.G., Chief Engineering Geologist
Gregg Fredrick, P.E., State Bridge Engineer
Mike Gostovich, P.E., State Traffic Engineer
Rick Harvey, P.E., State Materials Engineer
Martin Kidner, P.E., State Planning Engineer
File

**STATE DECISION DOCUMENT
FOUNDATION COAL WEST, INC., EAGLE BUTTE MINE
PERMIT NO. 428-T5-R3, CHANGE NO. 10**

In compliance with Article 4 of the Wyoming Environmental Quality Act Foundation Coal West, Inc. has applied for a Form 11 revision at the Eagle Butte Mine in Campbell County, Wyoming. The application proposes to relocate a portion of Highway 14/16 within the Eagle Butte Mine Permit area. The application primarily updates Section 3.1.5 (Relationship to Man-Made Structures and Other Mining Operations) and Section 3.3 (Transportation Systems) and does not propose any substantive changes to the existing operation. This State Decision Document is updated to reflect the entire permit.

On the basis of information set forth in the application or from that otherwise available and known to the applicant, I find the applicant has affirmatively demonstrated that:

No. 1. The application is accurate and complete (W.S. §35-11-406(n)(I)).

The applicant has provided a sworn statement certifying that all of the information contained in the permit application is true and correct to the best of his knowledge. In addition, and to the extent necessary and appropriate, independent agency verification supports the accuracy of the application. All of the information required by the Environmental Quality Act and its implementing regulation is contained in the application. This includes identification of interests, compliance information, resource information, land use information, pertinent maps and plans, the permit fee, other agency applications or approvals, an operations plan, a reclamation plan, license information, insurance information, proof of publication, and proof of public notice.

The following standard condition will apply here in this State Decision Document and be stated on the Form 1 for Permit No. 428:

Eagle Butte Mine may not mine coal from any Federal coal lease prior to receiving approval from the Secretary of the U.S. Department of the Interior. If Eagle Butte Mine has any questions on this topic, it should contact the Land Quality Division.

No. 2. The reclamation plan can accomplish reclamation as required by the Act (W.S. §35-11-406(n)(ii)) and Wyoming Department of Environmental Quality, Land Quality Division Rules and Regulations, Chapter 4, Section 2.

(a) The mined land will be restored to a condition equal to or greater than its highest previous use.

Section 4.1 and Table 4.1-1 specify the premining and postmining land uses. All the categories were drawn from the suite of land use categories defined in the LQD Coal Rules and Regulations or the Wyoming Environmental Quality Act. All the

premining land use categories were reasonably well documented by combinations of historical data specific to the permit area and/or Campbell County. Specifically, the premining land uses of grazingland, cropland, pastureland, water resources and wildlife habitat will be reestablished (Section 4.1). These postmine land uses have not been altered by this amendment.

Vegetation baseline for the Scoria Amendment was complete. However, the terminology for the AP map unit in Section 2.8-6 has become confusing. *In order to resolve this confusion, the following condition will apply here in this State Decision Document and be stated on the Form 1 for Permit No. 428:*

Eagle Butte Mine shall revise Appendix D-8 during the next Amendment application to update terminology for the "Improved Pasture" vegetation type on Maps 2.8-2, 2.9-3, 2.8-4 and 2.8-5 and in appropriate text.

Water for stock and wildlife is furnished by stockponds, wells, Little Rawhide Creek and its tributaries. Described in Subsection 4.6.1.5, six permanent impoundments classified as stockponds remain postmine. Postmine stockpond capacity is similar to premine although none of the premine ponds were permitted with the Wyoming State Engineer. No active surface water rights in the permit area were impacted by mining. Postmine surface water quantity and quality are addressed in Subsection 4.6.2.

Based upon the overall reclamation practices specified in Sections 4.1 through 4.7, the permittee has the sound potential to restore the approved postmining land uses. The permittee's relative success at permanent reclamation since the mine's inception also supports the contention that postmining land uses can and will be restored and that potential of the postmining land uses will equal or exceed the potential of the premining land uses.

- (b) *The approximate original contours of the land will be reestablished in a manner consistent with the proposed future use of the land (Chapter 4, Section 2(b)).*

The mine is considered a thin overburden mine as supported by a volume replacement ratio of 0.748 (Section 3.4.4). The postmine contouring plan is presented in Section 4.2. Contouring focuses on establishing a through drainage pattern in a northerly trend similar to premine. Approximate original contours will not be achievable even though virtually all overburden will be used to backfill mined areas. No in-pit or out-of-pit overburden stockpiles will remain postmine. Borrow from unmined lands will be restricted to highwall reduction areas. With this approach distinctive slopes will appear on the south and to a lesser extent on the east sides of the reclaimed pit area where highwalls have been reduced to a stable configuration. A commitment to construct slopes of 5:1 or less is included in Section 4.2. Plans for restoration of the hydrologic system are contained in Section 4.6.

- (c) *The reclamation plan provides for the removal, segregation, preservation, and replacement of topsoil or an approved substitute, and for the appropriate management of any toxic, acid-forming, or hazardous materials uncovered or created by the mining operation (Chapter 4, Section 2(c)(xi)).*

Topsoil /subsoil stripping and stockpiling plans are discussed in Section 3.4.2. Topsoil /subsoil replacement plans are located Section 4.3 of the permit. The combined topsoil and subsoil replacement depth is generally uniform, averaging 21 inches without the use of topsoil substitute materials. Topsoil and subsoil are not separately handled yet the plans assure that all materials determined by the baseline studies to be suitable for reclamation purposes will be salvaged, stockpiled for future reuse, or directly replaced on prepared backfill.

Overburden handling plans providing for the proper management for toxic, acid forming or hazardous materials are found in Section 3.4.4. These plans define materials of concern and provide burial options for the various materials. Generally, all deleterious materials will be buried a minimum of four feet beneath topsoil. Ten feet of burial depth will be provided where intermittent or perennial watercourses traverse the reclamation. These plans reflect currently recommended procedures that are designed to protect topsoil/subsoil resources and the waters of the state.

The regrade backfill sampling protocol is described in Subsection 5.2.2. The regraded spoil surface will be sampled in order to determine chemical suitability to a depth of four (4) feet, on a grid of five hundred (500) feet. Reconstructed intermittent or designed ephemeral channels (identified in Section 4.6 with generic cross sections) will be sampled to a depth of ten (10) feet every five hundred (500) lineal feet.

- (d) *Revegetation of all affected lands will be accomplished in a manner consistent with the reclamation plan and the proposed future use of the land (Chapter 4, Section 2(d)).*

Revegetation practices described in Section 4.4 details:

- methods to prepare the topsoil for seeding
- the permanent and temporary seed mixes and seeding rates
- shrub community restoration techniques and planting mixtures
- the methods and equipment for seed mix application
- the preferred calendar periods for applying seed mixes
- the techniques for mulching and other erosion control techniques
- pest and disease control, noxious weed control measures
- methods to protect newly seeded lands
- methods for the introduction of grazing practices

Section 4.8 and associated maps detail the progression of backfilling, grading, topsoil redistribution, and revegetation.

Section 5.5 specifies methods and schedules for interim vegetation monitoring and final bond release vegetation assessments.

The cumulative presentation of these methods and practices creates a sound potential that the permittee can establish:

- a diverse, self-renewing, permanent vegetative cover of the same seasonal variety native to the area.
- the requisite postmining composition and distribution of shrub patches.
- postmining plant communities which will support the postmining land uses.

The relative success of the permittee's permanent reclamation practices to date also support the contention that the practices specified in Section 4.4 attain the performance standards of the LQD Coal Rules and Regulations and the Wyoming Environmental Quality Act.

- (e) *Unchannelized surface water and ephemeral streams will be diverted around the operation or passed through sedimentation ponds to protect the operation and downstream water rights, and to control unnecessary erosion and water pollution (Chapter 4, Section 2(e), (f), and (h)).*

Surface water control practices and the design and performance standards for surface water control structures during mining are discussed in Section 3.5. Ephemeral flows are intercepted before entering active operations or are controlled within the active mining area. Water from disturbed areas is passed through approved treatment structures before being discharged off the permit area. Section 4.6 provides a discussion of Probable Hydrologic Consequences related to surface water quantity concluding that downstream water quantities will not be affected by the mining operation.

- (f) *Although the applicant proposes to mine near or through an intermittent stream, the original stream channel will be reclaimed. During and after the operation, the water quantity and quality of the stream, and its value as wildlife habitat, will be preserved (Chapter 4, Section 2(r)(ii)).*

Hydrologic control plans for the intermittent Little Rawhide Creek, including the current Little Rawhide Creek diversion, appear in Section 3.5. The East Prong of this drainage will be permanently diverted. All other channels flowing through the permit area exhibit ephemeral flow. Plans for hydrologic restoration in Section 4.6 explain how the affected portions of Little Rawhide Creek will be reestablished.

Water quality and quantity are projected in Section 4.6 to be similar to that in the premine setting. Surface water monitoring during and after mining is outlined in Section 5.3.

Valuable wetland habitat to be disturbed by mining will be reestablished. The U.S. Army Corps of Engineer (COE) approved plans for this aspect of reclamation are provided in Section 4.10.

- (g) *All permanent water impoundments will be constructed to prevent structural failures, safety hazards, and water contamination, and to accommodate revegetation. They will also meet the design criteria and performance standards outlined in Chapter 4, Section 2(g).*

Permanent impoundments listed in Subsection 4.6.1.5 are all stock ponds. Commitments to submit final designs to the Wyoming DEQ/LQD and the Wyoming State Engineer's Office for final approval prior to construction are included. Postmine water quality monitoring plans for these structures are included in Section 5.3. Revegetation plans are described in Section 4.4.

- (h) *The reclamation plan will ensure protection of the quantity, quality, and legal rights to surface water and ground water within and adjacent to the permit area. Surface water and ground water quality and quantity will be monitored during the course of mining and reclamation operations to determine the extent of the disturbance to the hydrologic balance (Chapter 4, Section 2(h) and (I)). The monitoring system is based on the results of the probable hydrologic consequences assessment and monitoring will be adequate to plan for modification of mining activities, if necessary, to minimize adverse effects on the water of the state. Plans for the proper installation, operation, maintenance and removal of all necessary monitoring equipment have been included in the permit application (Chapter 2, Section 2(b)(xi)).*

The reclamation plan will ensure protection of the quantity, quality, and legal rights to surface water and groundwater within and adjacent to the permit area. Plans to minimize disturbance to the hydrologic balance are presented in various portions of Section 4.6. The discussion of Probable Hydrologic Consequences is specifically provided in Subsection 4.6.3, concluding that no permanent impacts on the hydrologic regime will result due to mining. The plan to mitigate any affected adjudicated water right is also provided in Section 4.6.3. Proper sealing of all abandoned drill holes is presented in Sections 3.5.6 and 4.7.

Surface and groundwater monitoring plans during and after mining are presented in Section 5.3. The hydrologic monitoring plan is patterned after DEQ Guideline 8 suggestions and is thus designed to expand as mining progresses, continually maintaining adequate coverage for determining the extent of disturbance to the hydrologic balance. Should there be an unexpected disturbance to the hydrologic

balance, there would be ample time to modify mining activities. The postmine groundwater monitoring network will use several of the same wells which existed for the during-mining phase. In addition, Eagle Butte plans to install at least eighteen postmining monitoring wells in reclaimed spoils as mining and reclamation progresses. All postmining monitoring wells will be monitored until final bond release to determine the extent of disturbance to the hydrologic balance. The postmining groundwater monitoring program is based upon assessment of the hydrologic consequence and designed to determine infiltration rates, recharge capacity, hydraulic characteristic, subsurface flow, and groundwater quality within the reclaimed lands and the adjacent areas. The intent of the postmining groundwater monitoring efforts is to document the availability of groundwater and the suitability of the groundwater quality to be consistent with the approved postmining land use of livestock grazing and wildlife habitat. Plans for the proper installation, operation, maintenance, and removal of all necessary monitoring equipment are also described in Section 5.3.

- (i) *All constructed or upgraded roads and railroad spurs are included within the permit area from that point where they provide exclusive service and are covered by the reclamation bond (Chapter 4, Section 2(j)).*

A description of roads and transportation systems used during mining is provided by Section 3.3. All of these facilities are included in the permit area description, Section 1.8-1. Section 4.7 indicates that all man-made facilities, except those supporting the post-mine land use, will be reclaimed. Map 4.1-1 illustrates all facilities that will remain unreclaimed to support these uses. The annual reclamation bond for the permit includes the reclamation of the facilities that are not approved to support the postmine land use.

- (j) *All buildings and structures constructed, used, or improved by the operator will be removed and dismantled. All support facilities are designed to achieve the performance required by the applicable standards and should cause no significant harm to the environment or public health and safety (Chapter 4, Section 2(m) and (n)).*

A description of buildings and structures needed to conduct the operation is provided in Section 3.2. No constructed facilities, except for stockponds, are described in Section 4.1 as supporting the postmine land uses. Section 4.7 commits to the reclamation of these facilities.

- (k) *A detailed time schedule for the mining and reclamation progression has been included in the reclamation plan (Chapter 4, Section 2(k) and W.S. §35-11-406 (b)(xix)).*

Section 3.1.2 provides the location of the various components of the required mining and reclamation schedules. Specific schedules for topsoil, overburden and coal

removal are provided in Section 3.4. Specific schedules for backfilling, topsoil replacement and seeding are found within Section 4.8. Contemporaneous reclamation is discussed in Section 4.8.

Areas of Temporary Cessation of Operations (TCO) for reclamation scheduling are described in Section 4.6 and located on Map 4.2-2. Reclamation delays for these areas are justified due to the delay in additional mining of the east advance, or as in other areas, the need to utilize the TCO areas to support future mining operations.

- (l) *All exposed surface areas within the permit area will be protected and stabilized effectively to control erosion and air pollution attendant to erosion (Chapter 4, Section 2(q)).*

Protection of the air resource is discussed in Section 3.12.1. Most of these protection measures address road watering and surface stabilization practices. Procedures assuring protection of the air quality resource are further described in the current Air Quality Division Chapter 6, Section 3 Operating Plan, Permit No. 30-089-1. This current permit is valid through September 3, 2008.

- (m) *The mining and reclamation plan has been designed to minimize disturbance and adverse impacts on fish, wildlife, and related environmental values, and to achieve enhancement of these resources where practicable (Chapter 4, Section 2(r)).*

Restoration of fish and wildlife habitat is described in Section 4.5. These restoration plans, as well as all baseline characterizations have been reviewed and approved by the U.S. Fish and Wildlife Service and the Wyoming Game and Fish Department, as evidenced by letters in the review file dated April 7, 2005 and December 19, 2001, respectively.

- No. 3. *The proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area (W.S. §35-11-406(n)(iii)).*

Section 4.6 and supporting information provide sufficient evidence that no material damage to the hydrologic balance will be created by the operation.

A Cumulative Hydrologic Impact Assessment (CHIA) for the Little Powder River Area was prepared in February 2003 to assess the potential for material damage to the hydrologic balance due to the operation of Eagle Butte Mine, along with the operations of the Buckskin, Rawhide, Dry Fork, KFx, Fort Union and Wyodak Mines.

The finding was made that no significant long term or permanent damage from mining activities to the hydrologic balance (including surface and groundwater quality and quantity) will occur outside the permit areas of the coal mines. Based on available information, the Wyoming DEQ/LQD has determined that surface coal mining operations at Buckskin, Eagle Butte, Rawhide, Dry Fork, KFx, Fort Union and Wyodak Mines will impact the local

environment for a limited time. However, no permanent adverse impacts to the hydrologic system are expected and material damage to surface and groundwater quality and quantity is not expected to the drainage basin or aquifers as a whole.

A second CHIA titled *Cumulative Hydrological Impact Assessment of Coal Mining in the Northern Powder River Basin, Wyoming* (CHIA No. 15) was completed in February 2006. The CHIA included Eagle Butte Mine. Based upon the review of the CHIA combined with the location and small size of the proposed amendment, the LQD Administrator determined that a revised or updated PHC assessment or CHIA would not be required because no significant changes in the results of the PHC or CHIA were expected to occur as a result of the Scoria Amendment.

The applicant has committed to replacing any impacted water rights as specified in the Wyoming Coal Program which holds that coal mines are responsible for replacing any surface water right or supply affected by contamination, diminution, or interruption resulting from surface coal mining (W.S. §35-11-415(b)(xii) and 416(b)). The applicant's surface water and groundwater monitoring plans in Section 5.3 are sufficient to determine the extent of disturbance to the hydrologic balance outside the permit area and supports the approved post-mining land use.

- No. 4. *The area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to W.S. §35-11-425, within an area where mining is prohibited pursuant to Section 522(e) of P.L. 95-87, nor within an area under review for this designation in an administrative proceeding (W.S. §35-11-406(n)(iv)).*

In accordance with Sections 1.6 and 1.7, the only potentially designated areas unsuitable for mining are public roads. Mining nearby these areas are allowed because proper public notifications, waivers and consents have been obtained.

- No. 5. *The proposed operation contains alluvial valley floors within and adjacent to the permit area. However, it will not interrupt, discontinue, or preclude farming on said alluvial valley floor(s) that are irrigated or naturally subirrigated, excepting those undeveloped range lands within the alluvial valley floor(s) which are not significant to farming, or where the farming that might be precluded is of such a small acreage that its loss will have a negligible impact on the farm's agricultural production. The proposed operation will not materially damage the quantity or quality of water in surface or underground water systems that supply these alluvial valley floors (W.S. §35-11-406(n)(v)).*

Much of Little Rawhide Creek has been declared an Alluvial Valley Floor (AVF) non-significant to farming as it diagonally traverses the northern part of the permit area from west to east. Coming from the south within and adjacent to the permit area other portions of Little Rawhide Creek and its tributaries have also been declared AVF. AVF declarations are documented in Section 2.10 and Appendix 2.10-4 of the permit.

Monitoring, mitigation, and reclamation plans presented in Subsections 3.5.8.7, 4.6.1, and 4.6.2 are designed to prevent material damage to water supplies for the declared AVF. Reclamation features to prevent long-term impacts and to restore Essential Hydrologic Functions to AVF areas adjacent to mining operations appear in Subsection 4.6.2.4.

No. 6. The area to be surface mined does not contain prime farmland (W.S. §35-11-406(n)(vi)).

According to the Natural Resources Conservation Service (formerly the Soil Conservation Service) no prime farmlands exist in Campbell County, Wyoming due to the lack of available irrigation throughout the growing season. Specifically, Section 2.7.5 declares that no prime farmlands are identified within the permit area.

No. 7. The schedule required by W.S. §35-11-406(a)(xiv) and the compliance review conducted by WDEQ/LQD suggests that all surface coal mining operations owned or controlled by the applicant are currently in compliance with this act and all applicable State and Federal laws, or that any violation has been or is in the process of being corrected to the satisfaction of the authority, department or agency that has jurisdiction over the violation (W.S. §35-11-406(n)(vii)).

The Form 11 application to relocate Highway 14/16 did not require an Applicant Violator System (AVS) Evaluation. The last AVS check was evaluated and results confirmed for any outstanding violations related to Scoria Amendment. No other outstanding violations were identified. The operator is currently in compliance with applicable State and Federal laws.

No. 8. Neither the applicant nor operator controls or has controlled mining operations with a demonstrated pattern of willful violations of such nature and duration with such resulting irreparable harm to the environment as to indicate reckless, knowing or intentional conduct (W.S. §35-11-406(o)).

The applicant has not demonstrated a pattern of willful violations demonstrating reckless, knowing or intentional conduct. A compilation of violations received by the applicant is provided by Section 1.10 of the permit.

No. 9. The applicant does not qualify for an experimental practice variance (Chapter 9).

Eagle Butte Mine has not applied for an environmental practice variance.

No. 10. All appropriate Federal, State, and Local government agencies with an interest in historic preservation have approved the proposed operation, because it will not adversely affect any site(s) included in, or eligible for inclusion in, the National Register of Historic Places. A plan to mitigate adverse effects has been approved by the State Historic Preservation Office, and other appropriate agencies, and has been incorporated in the applicant's mine plan (Chapter 12, Section 1(a)(v)(C)).

Section 2.3 of the application summarizes the assessment of archeological resources for the existing permit area. Appendix 2.3-14 of this section provides State Historic Preservation Office (SHPO) clearance for the proposed affected area prior to the approval of the Scoria Amendment. Additional clearance for all lands within the amendment lands is provided by SHPO in correspondence dated January 31, 2002. No archeological sites potentially eligible for the National Historic Registry were located within the permit area, nor are additional investigation suggested.

The following standard condition will apply here in this State Decision Document and be stated on the Form 1 for Permit No. 428:

The operator shall report any unanticipated discovery of cultural or paleontological resource to the Land Quality Division within five (5) days. Any unanticipated cultural or paleontological resource site(s) shall be protected from any disturbance until they have been evaluated and salvaged if necessary.

- No. 11. *Although the Eagle Butte Mine operation is not within one hundred feet of the outside right-of-way line of a public road, the road may be relocated or the area affected because the applicant has obtained the necessary approvals of the authority with jurisdiction over the public road prior to the term-of-permit within which the road will be constructed. Public notice and an opportunity for public hearings for this purpose have been provided and the required written finding has been made determining that the interests of the public and the affected landowners will be protected from the proposed operation (Chapter 12, Section 1(a)(v)(D)).*

The proposal to relocate Highway 14/16 was accepted by the Wyoming Department of Transportation (WYDOT) which is the authority with jurisdiction over the public Highway. WYDOT manages the performance standards with respect to road relocations and implements its own public notification process. Further, WYDOT agreed to make the Highway 14/16 relocation alignment permanent. Documentation for the WYDOT acceptance of the permanent Highway 14/16 relocation is provided in Section 3.1.5 and in Figure 3.3-5. The Highway relocation alignment is illustrated in Map 3.3-7.

Public notice and opportunity for public hearing for the relocation of Highway 14/16 have been provided by WYDOT through notices in the *Gillette News-Record* published January 25, 2006, February 1, 5, and 6, 2006, and March 5, 2006. A Public Open House and Information Meeting was held in Gillette on February 7, 2006 followed by a 30-day public comment period. Based on this information, the LQD Administrator determined that adequate public notice and an opportunity for public hearings were provided by WYDOT as the authority with jurisdiction over the public Highway, and the required written finding has been made determining that the interests of the public and the affected landowners will be protected from the proposed operation as per LQD Rules and Regulations Chapter 12, Section 1(a)(v)(D).

The majority of the Eagle Butte Mine operation will not involve mining within one hundred feet of the right-of-way of U.S. Highway 14-16. However, plans to conduct mining operation within one hundred feet of the right-of-way of U.S. Highway 14-16 and Wyoming Highway 59 are dispersed throughout the mining and reclamation plans resulting from previous Amendments and Mine Plan revisions. Specific plans to conduct blasting operations in proximity to the respective right-of-ways, including plans to control traffic, are designed to protect the public. These plans are provided in Section 3.8, with further discussion and consent provided by the Wyoming Department of Transportation in Section 1.4.17.

- No. 12. *For the term covered by the permit, the proposed operation will be consistent with other surface coal mining and reclamation operations proposed or contemplated in pending or approved mining permits (Chapter 12, Section 1 (a)(iv)(A)).*

Adjoining the Eagle Butte Permit area are the Dry Fork and Rawhide Mines, as well as a small portion of the Fort Union mine. Consent agreements with all of these entities are provided in Section 1.4 of the existing permit. During the existing and next future term of permit no proposed activities overlap the adjacent operations.

The following standard condition will apply here in this State Decision Document and be stated on the Form 1 for Permit No. 428:

Within ninety (90) days of each LQD approval revision to Permit No. 240 (Rawhide Mine) or Permit No. 599 (Dry Fork Mine) which affects the "Dual Permitted Area" between Permit Nos. 428 and 240 and between Permit Nos. 428 and 599, Eagle Butte Mine shall submit a revision to Permit Number 428. This revision application shall update and revise all text and maps associated with the "Dual Permitted Area" in order to bring Permit No. 428 into accord with the revised Permit No. 240 or Permit No. 599.

The LQD District 3 Office shall notify Eagle Butte Mine of the need to submit any such revisions. Further, Eagle Butte Mine shall submit a letter from the permittee for Permit No. 240 or Permit No. 599 whenever Eagle Butte Mine submits a revision application which affects lands within the "Dual Permitted Area" between Permit Nos. 428 and 240 and between Permit Nos. 428 and 599. This letter shall state that the permittee believes the proposed revision is in compliance with all agreements between the two companies. This letter shall be incorporated into Permit Number 428 as an element of the revision application.

- No. 13. *The mining and reclamation activities proposed will not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats (Chapter 4, Section 2(r)(iii)).*

The U.S. Fish and Wildlife Service has reviewed the Wildlife Monitoring plan in Section 5.6 and has determined that as long as the operation is conducted as proposed all wildlife

issues of Federal interest will be adequately addressed. This non-jeopardy decision is provided in an April 7, 2005 letter. Wyoming Game and Fish Department provided further review and concurrence with the Wildlife Monitoring plan.

- No. 14. *No mining or reclamation activities will take place within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, or any National Forest (Chapter 12 Section 1(a)(v)(A) and (B)).*

No surface lands administered by the Federal government lie within or adjacent to the permit area, therefore no mining will take place within the aforementioned boundaries. Surface ownership within and adjacent to the permit area is provided by Section 1.6 and 1.7 of the permit, respectively.

- No. 15. *No mining or reclamation activities will be conducted within three hundred (300) feet of any occupied dwelling, public building, school, church, community, institutional building, or public park, nor within one hundred feet of a cemetery (Chapter 12, Section 1(a)(v)(E), (F), and (G)).*

Eagle Butte Mine does not propose to mine within three hundred (300) feet of the aforementioned structures or facilities. Map 1.9-2, Manmade Features, illustrates that none of the aforementioned public facilities are present within this distance restriction.

- No. 16. *Public notice for the relocation of Highway 14/16 was given by WYDOT in the Gillette News-Record from January 25, 2006 through February 6, 2006, and on March 5, 2006. As the public road authority with jurisdiction over Highway 14/16, WYDOT addressed public comment and finalized the plan for the relocation of Highway 14/16.*

Foundation Coal West, Inc. has demonstrated that the Eagle Butte Mine surface coal mine permit application substantially complies with Article 4 of the Wyoming Environmental Quality Act and all other applicable State and Federal Laws and Regulations. As authorized by W.S. §35-11-406(n) and in compliance with W.S. §35-11-406(p) I do hereby recommend the issuance of Permit No. 428-T5 to the Foundation Coal West, Inc Eagle Butte Mine with the following standard conditions, as required by Wyoming Department of Environmental Quality, Land Quality Division Rules and Regulations Chapter 12, Section 1(a)(ix):

- (A) *All operations shall be conducted in accordance with the approved mining and reclamation plan and any conditions of the permit or license;*
- (B) *The rights of entry shall be provided as described by the Act and any regulations promulgated pursuant thereto;*
- (C) *The operation shall be conducted in a manner which prevents violation of any other applicable State or Federal law, and*

- (D) *All possible steps shall be taken to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with this approved mining and reclamation plan and other terms and conditions of any permit or license, including monitoring to define the nature of the noncompliance and warning of any potentially dangerous condition.*
- (E) *All reclamation fees shall be paid as required by Title IV, P.L. 95-87, for coal produced under the permit for sale, transfer or use.*

Signed this 2 day of August, 2007.


Richard A. Chancellor
Administrator, Land Quality Division

APPENDIX 6

APPEAL PROCEDURES

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF
APPEAL.....

A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the *Notice of Appeal* in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a *Notice of Appeal* in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).

2. WHERE TO FILE

NOTICE OF APPEAL..... BUREAU OF LAND MANAGEMENT, 5353 YELLOWSTONE ROAD, CHEYENNE, WYOMING 82009 or
BUREAU OF LAND MANAGEMENT, PO BOX 1828, CHEYENNE, WYOMING 82003

WITH COPY TO
SOLICITOR...

U.S. DEPARTMENT OF THE INTERIOR, OFFICE OF THE SOLICITOR, ROCKY MOUNTAIN REGION
755 PARFET STREET, SUITE 151, LAKEWOOD, CO 80215

3. STATEMENT OF REASONS

Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary (43 CFR 4.412 and 4.413).

WITH COPY TO
SOLICITOR.....

U.S. DEPARTMENT OF THE INTERIOR, OFFICE OF THE SOLICITOR, ROCKY MOUNTAIN REGION
755 PARFET STREET, SUITE 151, LAKEWOOD, CO 80215

4. ADVERSE PARTIES.....

Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).

5. PROOF OF SERVICE.....

Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).

6. REQUEST FOR STAY.....

Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a *Notice of Appeal* (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your *Notice of Appeal* (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the *Notice of Appeal* and Petition for a Stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay. Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that all communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

43 CFR SUBPART 1821—GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office ----- Alaska
Arizona State Office ----- Arizona
California State Office ----- California
Colorado State Office ----- Colorado
Eastern States Office ----- Arkansas, Iowa, Louisiana, Minnesota, Missouri
and, all States east of the Mississippi River
Idaho State Office ----- Idaho
Montana State Office ----- Montana, North Dakota and South Dakota
Nevada State Office ----- Nevada
New Mexico State Office ----- New Mexico, Kansas, Oklahoma and Texas
Oregon State Office ----- Oregon and Washington
Utah State Office ----- Utah
Wyoming State Office ----- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

(Form 1842-1, September 2006)